

After Dictatorship

Instruments of Transitional Justice in Post-Authoritarian
Systems

Edited by
Peter Hoeres and Hubertus Knabe

DE GRUYTER

Supported by the Federal Ministry for Development and Economic Cooperation.

ISBN 978-3-11-079184-6

e-ISBN (PDF) 978-3-11-079662-9

e-ISBN (EPUB) 978-3-11-079670-4

DOI <https://doi.org/10.1515/9783110796629>



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Library of Congress Control Number: 2022943268

Bibliographic information published by the Deutsche Nationalbibliothek

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.dnb.de>.

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Cover image: GAPS / iStock Unreleased / Getty Images

Printing and binding: CPI books GmbH, Leck

www.degruyter.com

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Tadesse Simie Metekia

Ethiopia: The Post-Dergue Transitional Justice Process

Ethiopia, allegedly the oldest independent state in Africa, is back to civil war after almost three decades of relative peace. A war that broke out in northern Ethiopia in November 2020 has not yet ended at the time of writing. The main warring parties, the Tigray People's Liberation Front (TPLF) and the federal government, have not yet agreed to solve their differences amicably. In Ethiopia's west and southern parts, the government has engaged in a sporadic yet protracted armed conflict against the Oromo Liberation Front (OLF).

Armed conflicts, be they are internal or international in nature, are not new in Ethiopia.¹ Ethiopia's political history is marked by dictatorship after dictatorship, whereby new governments come to power by force and rule the country unconstitutionally.² However, the current conflicts have their roots in how Ethiopia handled the 1991 transition from the Dergue, a dictatorial regime that ruled Ethiopia from 1974–1991.³ The TPLF, OLF and the Eritrean People's Liberation Front (EPLF) were the main warring groups that toppled Dergue after a long and bloody civil war – the longest in post-colonial Africa.⁴ While the EPLF declared Eritrea's independence as a new state, the TPLF and OLF, together with other warring and non-warring groups, established a transitional government in Ethiopia in July 1991.⁵

The establishment of a Transitional Government of Ethiopia in 1991 was an unprecedented attempt to address the question of responding to the violence and atrocities perpetrated during the dictatorial regime. Following its establishment, the transitional government adopted various elements of transitional justice. This case study examines the successes and failures of the transitional justice measures adopted in Ethiopia for the first time, following the establishment of the 1991 Transitional Government of Ethiopia.

1 For details on Ethiopia's history of war, see Tadesse S. Metekia, *Prosecution of Core Crimes in Ethiopia: Domestic Practice vis-à-vis international standards* (Lieden: Brill, 2021), 308–310.

2 According to Tola, '...violence has almost always been the media of government-people relations in Ethiopia. The country's history is filled with numerous pages and chapters of repressions and massacres perpetrated by those in power against the people.'. See B. Tola, *To kill the Generation: The Red Terror in Ethiopia* (Washington DC: Free Ethiopian Press, 1989), 3. Professor Baharu Zewde, a historian, agrees that 'the history of the country is replete with wars and acts of violence'. See B. Zewde, 'The history of the Red Terror: Contexts and Consequences,' in *The Ethiopian Red Terror Trials: Transitional Justice Challenged*, ed. Kjetil Tronvoll et al. (Martlesham: James Currey, 2009), 17–32, 20.

3 For details on the Dergue, see section 1 below.

4 See Gebru Tareke, *The Ethiopian Revolution: War in the Horn of Africa* (New Haven: Yale University Press, 2009), 59.

5 See Transitional Period Charter of Ethiopia: Proclamation No.1/ 1991, entered into force 22 July 1991.

Section 1 of this case study introduces Ethiopia's experience with the dictatorship regime. It provides the political context behind the establishment and structural operation of Dergue regime and the nature and scope of the violence perpetrated by it. Section 2 appraises the transitional justice measures adopted in post-Dergue Ethiopia. It examines details of the various mechanisms put in place by the Transitional Government of Ethiopia (TGE), 1991–1995, and afterwards by the Federal Government of Ethiopia. Section 3 evaluates whether the post-1991 transitional justice measures adopted in Ethiopia were successful. It identifies and discusses the successes and failures in Ethiopia's efforts to come to terms with its past.

1 The Experience of Dictatorship

In early 1974, armed forces, teachers, students, trade unions and civil servants had started a series of strikes and protests against the Haile Selassie regime.⁶ Gradually, countless groups joined the uprising, demanding that the *ancien régime* put an end to political and economic problems.⁷ Although the popular uprisings were organized by various coordinating committees representing different sections of the rebelling public, a more robust coordinating committee called the Coordinating Committee of the Armed Forces, the Police and the Territorial Army, also called Dergue, was established on 28 June 1974. Dergue, composed of 106 junior officers (majors, NCOs and privates), was founded mainly to arrest the officials of the *ancien régime*.

Although it had despised officials of the Haile Selassie regime and accused them of plundering public property and keeping the public in chains of poverty, Dergue emphasized its allegiance to Emperor and country in July 1974's *Ethiopia Tikdem* – a motto vowing to put Ethiopia first. The motto *Ethiopia Tikdem* (ኢትዮጵያት-ቅደም), which means 'Ethiopia First', was first used in the earliest stages of the 1974 revolution as a slogan, according to Shifaw, against the corruption and corrupt officials of the Haile Selassie regime.⁸ Soon, *Ethiopia Tikdem* evolved into a motto that advocated putting the country's interests above and beyond anything or anyone else.⁹

Gradually, however, Dergue had started implementing a series of orchestrated measures aimed at undermining the government and the Emperor's role in the country's political administration, a process commonly referred to as the creeping *coup*

6 Teffera Haile-Selassie, *The Ethiopian Revolution 1974–1991: From a Monarchical Autocracy to a Military Oligarchy* (London: Kegan Paul International, 1997), 30–64; Tesfayde Dinka, *Ethiopia during the Derg Years: An Inside Account* (Los Angeles: Tsehai Publishers, 2016), 28–29.

7 Haile-Selassie, *The Ethiopian Revolution 1974–1991*; Dinka, *Ethiopia during the Derg Years*.

8 It became a caption to a more elaborate manifesto of Dergue issued on 1 November 1974. See Dawit Shifaw, *The Diary of Terror: Ethiopia 1974–1991* (Bloomington: Trafford Publishing, 2012) 16.

9 Shifaw, *The Diary of Terror*.

d'état.¹⁰ The creeping coup achieved its ultimate goal on 12 September 1974. Dergue officially instituted itself as the Provisional Military Government (PMG) of Ethiopia by suspending the Revised Constitution, deposing the emperor and dissolving the Chamber of Deputies and the Senate (Parliament).¹¹

Dergue's ascension to power was accompanied by the establishment of a military court on 12 September 1974 designed, to punish persons who violated a ban on strikes, demonstrations, assemblies, or any form of supposed conspiracy against the *Ethiopia Tikdem* principle.¹² Two months after its establishment, the PMG took a violent turn when it summarily executed 59 senior officials of the Haile Selassie regime on 23 November 1974. Arguably marking, the beginning of persecution that lasted the entire 17 years of Dergue rule, the summary executions were officially announced by Dergue on national television and radio. The following piece discusses the temporal scope of Dergue's persecution. It also examines the political background, ideological justification, structures, extent and forms of persecution, victim groups, perpetrators, and the mechanisms adopted by the Ethiopian people to overcome the persecution.

1.1 Relevant Period

Scholars of the political history of Ethiopia rarely agree on the start date of the violence perpetrated during the Dergue regime. While Bahru Zewde, a professor of Ethiopian history, alleges that the Red Terror started on the day Dergue summarily executed the officials of the Haile Selassie regime,¹³ several others limit the Red Terror to the late 1970s. The main cause for this disagreement apparently lies in the fact that most of the literature on Dergue's violence is specific to the discussion of the Red Terror. The emphasis of the debate is on the question of who shot the first bullet – Dergue or the opposition.¹⁴ Overly concerned with discussing this question, the existing scholarship has shown a near-complete disregard for the period before and after the Red Terror, thereby reducing the temporal scope of Dergue's violence to the late 1970s. Even then, the state of scholarship on the Red Terror is 'burdened

10 Haile-Selassie, *The Ethiopian Revolution 1974–1991*, supra note 9, 30–64; Dinka, *Ethiopia during the Derg Years*, supra note 9, 28–29.

11 See Provisional Military Government Establishment Proclamation No. 1 of 1974, entered into force 12 September 1974.

12 Provisional Military Government Establishment Proclamation No. 1 of 1974, Articles 8 and 9.

13 See Bahru Zewde, 'The history of the Red Terror: Contexts and Consequences', supra note 4.

14 See Melakou Tegegn, 'Mengistu's Red Terror' (2012) 10(3) *African Identities* 249–263; P. Toggia, 'The Revolutionary Endgame of Political Power: The Genealogy of "Red Terror" in Ethiopia', *African Identities* 10(3) (2012): 265–280; Tessema, *Prosecution of Politicide in Ethiopia*, supra note 18, 36–49. For relevant remarks in the case law, see FHC, *SPO vs. Hailu Burrayu Sima et al.*, (Trial Judgment, 31 October 2005), File No. 03119, 86.

with bias, limited scope and a reproduction of the polemics, accusations and justifications of the time’, as Jacob Wiebel noted in an essay written in 2012.¹⁵

In what seemed to be an effort to set the record straight, the Special Prosecution Office (the SPO), established pursuant to a law enacted in 1992 (the SPO Proclamation),¹⁶ wrote in its final report to the House of Peoples’ Representatives that:

Indisputably, ‘Red Terror’ refers to 1977/78, where Dergue’s atrocious acts reached their climax. Red Terror was a designation given by Dergue to its acts of encroachment. Nonetheless, it is a mistake to think that the *atrocities committed during Dergue occurred only during the Red Terror period* or that the EPRP was the only victim of the Red Terror.¹⁷

Indeed, court records show that Dergue stood trial for crimes committed as recently as 1989 and 1990, over a decade after the Red Terror period ended.¹⁸ The whole Dergue trial, and even the *Mengistu et al.* case, which commentators commonly cite as the main Red Terror trial, was not only about the crimes committed during the Red Terror. In this case, the SPO prosecuted Dergue’s top officials for acts of genocide that they allegedly planned and orchestrated between 1974 and 1983.¹⁹ But limiting Dergue’s violence to the Red Terror period risks excluding war crimes that occurred during the protracted armed conflicts, which was a situation unrelated to the Red Terror campaign. *Legesse Asfaw et al.* have dealt with war crimes perpetrated in Ethiopia between 1983 and 1988.²⁰

Overall, the entire 17 years of Dergue’s rule were marred by systemic and widespread persecution. Some writers have argued that Dergue was an entity established with no propensity for violence but was rather pushed and radicalized into a dicta-

15 See Jacob Wiebel, ‘The State of Scholarship on the Ethiopian Red Terror’ in ERTDRC, *Documenting the Red Terror: Bearing Witness to Ethiopia’s Lost Generations* (Ottawa: ERTDRC North America Inc, 2012) 89–96.

16 See Proclamation Establishing the Office of the Special Prosecutor: Proclamation No. 22/1991, entered into force 8 August 1992. [Hereinafter: the SPO Proclamation].

17 See Special Prosecutor’s Office, *Dem Yazele Dossie: Begizeyaw Wotaderawi Dergue Weyem Mengist Abalat Benetsuhan Zegoch Laye Yetefetsem Wenjel Zegeba* (Addis Ababa: Far-East Trading P.L.C., 2010) [Hereinafter: *Dem YazeleDossie*], 122. Translation by the author. The original (Amharic) version reads:

ቀይሽብር 1970 የደርግ የጭፍጨፋ ተግባር ጣሪያ ላይ የደረሰበት ወቅት መገለጫ መሆኑ አይካድም። ቀይሽብር በአንድወቅት የጊዜያዊ ወታደራዊ አስተዳደር ደርግ ወይም መንግስት ለግፍ ተግባር በቀይሽብር ወቅት የተፈጸመው ብቻ ነበር ወይም የቀይሽብር ሠላባ ኢሕአፓ ብቻ ነው ብሎ ማሰብ ስህተት ነው።.

18 See ASC, *SPO vs. DagnenetAyalew et al.*, (Indictment), 23 December 1997, File No. 13/90, 6–9; FHC, *SPO vs. Getahun Zenebe Woldeselassie et al.*, (Revised Indictment), 16 June 1999, File No. 962/89, 3–7; FHC, *SPO vs. Teshome Kebede et al.*, (Indictment), 23 December 1997, File No. 931/89, 2; FHC, *SPO vs. Tesfaye Belayeneh et al.*, (Indictment), 23 December 1997, File No. 934/89, 2; FHC, *SPO vs. Colonel Tesfaye Woldeselassie Eshetie et al.*, (Indictment), 8 October 2000, File No. 206/93, 8–9.

19 See FSC, *SPO vs. Colonel Mengistu Hailemariam et al.*, (Revised Indictment of 28 November 1995), File No. 1/87, 11.

20 See FHC, *SPO vs. Legesse Asfaw et al.*, (Trial Judgment), 4 March 2008, File No. 03116.

torship by the civilian left.²¹ However, the Federal High Court of Ethiopia averred that Dergue had prepared to become a dictatorial power even before September 1974. It had organized itself with institutions of repression, some of which were established for the sole purpose of destroying political groups, and some of which were reorganized to intensify the execution of a plan to destroy individuals and groups that would oppose its revolution. The first such institution was the Dergue Campaign and Security Department (DCSD), established at the beginning of July 1974 to prepare and coordinate the armed forces for combat activities.²² The DCSD had a hitsquad²³ and a Daily Situations Follow-up Unit (DSFU).²⁴

What is commonly referred to as Dergue regime comprised two significant administration periods: the Provisional Military Government (PMG), 1974–1987, and the People’s Democratic Republic of Ethiopia (PDRE), 1987–1991. The PMG ruled the country by a series of decrees without a constitution. The PDRE was established following the adoption of the socialist constitution in 1987. Essentially, the same members of Dergue who ruled the country during the PMG remained in power after the PDRE was set up.

1.2 Political Background

The 1974 revolution resulted from a stark opposition to the imperial monarchy which, although it had started making efforts to modernize the country after the Second World War, was keeping the country in extreme poverty, with two-thirds of the land controlled by the aristocracy and the church. Nonetheless, Dergue did not have a clear political policy or ideology from its inception. Dergue carried along the *Ethiopia Tikdem* motto for about six months after its establishment, redefining it as a philosophy and then a political ideology. In that sense, the contents of the motto had to evolve with the creeping coup. In November 1974, *Ethiopia Tikdem* was redefined as a more comprehensive philosophy to reflect the beginning of a new era following the ousting of the Emperor and Dergue’s assuming control of the entire state power. At that point, the philosophy comprised 11 principles, ranging

21 Messay Kebede, ‘The Civilian left and the Radicalization of Dergue,’ *Journal of Developing Societies* 24(2) (2008): 159–182.

22 See Kebede, ‘The Civilian left and the Radicalization of Dergue,’ 6. The department was composed of nine military members including lieutenant Colonel Fisseha Desta.

23 Kebede, ‘The Civilian left and the Radicalization of Dergue,’ 10. The hit squad was composed of soldiers handpicked from various divisions of the army by order of Colonel Mengistu Hailemariam. The court also noted that the hitsquad and the security unit of the DCSD were often sent on missions to attack anti-revolutionaries, which they carried out in collaboration with the *Kebeles* and the police. Besides, there was no evidence that the hitsquad was established on a short-term basis. In a document prepared in February 1978, it was stated that the hitsquad had been carrying out such an assignment since its establishment.

24 Kebede, ‘The Civilian left and the Radicalization of Dergue,’ 10.

from giving ‘precedence to the interest of the many’ to the establishment of a ‘government of the people, by the people, for the people’.²⁵

By the end of 1974, Dergue came up with a relatively clear political ideology, i. e. ስላሳተሰባዊነት (*Hibretesebawinet*) or *Ethiopian socialism*. According to Wogderes, a Dergue official who served as Prime Minister of the PDRE, the initial decision to accept and follow socialism as an ideology did not develop with Dergue. It was promoted by the student body of Addis Ababa University, which recognized that the already declared ‘*Ethiopia Tikdem*’ lacked tangible ideological, economic or political grounds. The students rigidly stated that they would not participate in Dergue’s highly needed work campaign in rural Ethiopia²⁶ unless Dergue declared the specific political ideology it intended to follow.²⁷ In fact, by the end of the 1960s or at least by the beginning of the 1970s, ‘Marxism-Leninism had come to be the dominant ideology of the student movements both at home and abroad’.²⁸

Deliberations regarding whether Ethiopia should take Marxist, Leninist, and Maoist socialism as a prototype or come up with a different version of its own dominated the politics of the time. Colonel Mengistu, Major by then, persuaded the administration to establish a committee comprised of various intellectuals to dredge up a solution regarding whether or not to embrace socialism.²⁹

The majority of the members of Dergue were not familiar with the rudiments of ‘scientific’ socialism.³⁰ It is difficult to imagine that the remaining few, including Colonel Mengistu, had an adequate understanding of the concept.³¹ It appears that the majority of Dergue wanted to subscribe to a less confusing ideology that at least con-

25 Haile-Selassie, *The Ethiopian Revolution 1974–1991*, supra note 9, 135–136.

26 For a detailed structure and program regarding the Work Campaign, see Development through Cooperation, Enlighten and Work Campaign Proclamation No. 11/1974. See also Andargachew Tirneh, *The Ethiopian Revolution, 1974–1987: A transformation from aristocratic to a totalitarian autocracy* (Cambridge: Cambridge University Press, 1993), 171, stating that the Campaign was intended to ‘exorcise’ (through education and enlightenment) the rural population of all backwardness such as lack of education, lack of morality and the existing unjust land-tenure system.

27 Fikre-Selassie Wogderes, *Egnana Abyotu [We and the Revolution]* (Los Angeles: Tsehai Publishers, 2014), 158.

28 See, for example, Bahru Zewede, *The Quest for Socialist Utopia: the Ethiopian Student Movement c. 1960–1974* (Addis Ababa: Addis Ababa University Press, 2014), 127–138, 128. See also Paul B. Henze, *Rebels and separatist in Ethiopia: regional resistance to a Marxist Regime* (RAND Corporation, 1985), v–vii.

29 Henze, *Rebels and separatist in Ethiopia*, 159. See also Taffara Deguefe, *Minutes of Ethiopian Century* (Addis Ababa: Shama Books, 2006), 428.

30 Henze, *Rebels and separatist in Ethiopia*, 159.

31 Henze, *Rebels and separatist in Ethiopia*, 159. See also, United States Department of State, *Ethiopia: Radicals Stave off New Challenges* (Bureau of Intelligence and Research, 1976), 4, accessed 27 April 2022, <https://2001-2009.state.gov/documents/organization/67024.pdf>. ‘It is doubtful that he fully comprehends Marxist or Maoist ideology, but some Communist concepts – such as the class struggle, the national bourgeoisie, and imperialism – provide him with a much-needed political formula for Ethiopia’s current stage of development.’.

formed to the principles enshrined in the motto ‘Ethiopia Tikdem’.³² Cognizant of that, Colonel Mengistu explained to the members of Dergue that:

Ethiopian Socialism means ‘Ethiopia Tikdem’. Socialism changes the life of the poor; ensures equality; brings prosperity within a short time; frees our country from poverty and backwardness; exploitation and embezzlement of any sort will not exist; famine and dearth will be eradicated.³³

After members of Dergue accepted Ethiopian socialism as ‘an elaborated form of *Ethiopia Tikdem*’,³⁴ Dergue engaged in simple propaganda to talk the Ethiopian public into supporting its political ideology. Accordingly, it announced Ethiopian socialism as a political ideology stemming from the religious traditions of Christianity and Islam in Ethiopia.³⁵

Gradually, Dergue started clarifying what it actually meant by socialism. On 11 March 1975, Dergue promulgated Proclamation No. 26/1975, which put into place one of the key features of ‘socialism’ in Ethiopia, namely public ownership of the means of production. The law stipulated that those resources crucial for economic development and promoting an essential service to the community be transferred to the government.³⁶

To implement the policies of *Ethiopia Tikdem*, Dergue established the Workers’ Party of Ethiopia (WPE) with the help of party members from socialist countries such as East Germany. Dergue wanted to forge WPE into as the single socialist party that would lead the country.³⁷ Apparently, the regime’s plan was to cultivate a single will for the broad masses and then establish the dictatorship to maintain

³² Tiruneh, however, states that ‘Ethiopian socialism’ appears to have been envisaged by Dergue as a compromise between the demands of the radical left for a Marxist-Leninist programme and those of the interest groups and voices of moderation. See Tiruneh, *The Ethiopian Revolution, 1974–1987*, supra note 29, 88.

³³ Wogderes, *Egnana Abiyotu*, supra note 30, 159–160. Translation by author. The original version reads,

የኢትዮጵያ ሶሻሊዝም ማለት ኢትዮጵያ ትቅደም ማለት ነው። ሶሻሊዝም የድሃውን ሕዝብ ሕይወት ይቀይራል፣ እኩልነትን ያሰፍናል፣ ብልፅግናን በአጭር ጊዜ ያስገኛል፣ አገራችንን ከኋላ፣ ቀርነትናከድህነት ያላቃል፣ ማገናወ. ምዳይነት ብዝበዛና ምዝበራ አይኖርም፣ ረሃብና እርዛት ይወገዳል።

³⁴ See, for instance, Haile-Selassie, *The Ethiopian Revolution 1974–1991*, supra note 9, 159. According to him, the basic principles were deliberately repeated in the declaration to show that the philosophy of Ethiopia Tikdem was identical in both content and form with Ethiopian Socialism.

³⁵ Such an assertion could be no more than an attempt to win ideological support from the highly religious majority of the Ethiopian population at the time. See Haile-Selassie, *The Ethiopian Revolution 1974–1991*, supra note 9, 151.

³⁶ Proclamation No. 26/1975, Government ownership and control of the Means of production, entered into force 11 March 1975. See idem, preamble para. 2.

³⁷ The official establishment of the Worker’s party took place in 1984 with Mengistu Haile-Mariam as secretary-general.

the status quo.³⁸ As it is natural for the broad masses to lack a single political will, as stated above, Dergue had to put in place a series of measures indispensable to forging a single political party. Nevertheless, the most significant step, which outlawed alternative political views and provided for the inviolability of Ethiopian socialism, was already publicized in November of the same year via the promulgation of the Special Penal Code (SPC). The SPC provided for the punishment of *offences against national progress and public safety and security* as well as *offences against the motto Ethiopia Tikdem*.³⁹ Accordingly, Article 35 indicates that whosoever commits an offence against Ethiopian socialism is punishable by rigorous imprisonment from five to ten years.⁴⁰ The death penalty was provided in more severe cases, where the matter goes beyond exercising a dissenting political view and involves endangering the institution of the PMAC by violence, threats, conspiracy, or other unlawful means.⁴¹

Other measures provided by law, perhaps to assist Dergue in forging a single-will of the broad masses, include: i) the establishment of a political school to politicize and organize the broad masses by providing for education that focuses on scientific socialism;⁴² ii) dissemination of the ideology of Marxism-Leninism in the mass organizations and professional associations established pursuant to proclamation 119/77;⁴³ and iii) imposing upon higher education institutions a mandate to teach, expound and publicize socialism.⁴⁴

1.3 Ideological Justification

The violence during the Dergue regime was arguably based on ideological differences between perpetrators and victims. Dergue labelled its victims as anti-people, anti-revolutionary, anti-socialist imperialist or reactionary forces. However, not all

38 For details on formation of WPE, see R. Warner, 'The Workers' Party of Ethiopia' (A Report Prepared by the Federal Research Division of the Library of Congress under an Interagency Agreement, Washington DC, 12 October 1984) 1–17, accessed 7 June 2022, <https://apps.dtic.mil/sti/pdfs/ADA303418.pdf>.

39 See the SPCP, Article 35, offences Against the Motto Ethiopia Tikdem, which reads: 'Whosoever fails to comply with Proclamations, Decrees, Orders or Regulations promulgated to implement the popular Motto "Ethiopia Tikdem" or hinders compliance therewith by publicly inciting or instigating by word of mouth, in writing or by any other means...'.³⁹

40 SPCP, Article 35.

41 See the SPCP, Article 9 regarding outrages against the institution of the PMAC. See also SPCP, Articles 7, 8, 10, and 11.

42 Political School Establishment Proclamation No.120/1977, entered into force 14 July 1977.

43 Provisional Office for Mass Organizational Affairs Organization and Operation Improvement Proclamation No.119/1977, entered into force 14 July 1977, Article 8 (11).

44 Higher Education Institutions Administration Proclamation No.109/1977, entered into force 13 January 1977, Article 3(1).

victims were members and affiliates of opposition political groups. For instance, ‘the Emperor was assassinated owing to Dergue’s phoney belief that his continued existence might have left the innocent public with a hope that he might reign again’ and thus not because of a specific political ideology.⁴⁵

Most importantly, the major opposition forces targeted by Dergue had carried socialism as a political ideology. The EPRP was a pro-communist organization opposed to Dergue, mainly because the latter was a military force. An organization widely known by its Amharic name MEISON, a socialist party that dubbed itself the All-Ethiopian Socialist Movement, had made a short-term alliance with Dergue with a view to strengthening socialism from inside. These and other opposition groups were believed to have been organized and led by groups of radical intellectuals who had espoused ‘Marxism in the 1960s and devoted themselves to the study of its application in Ethiopia’.⁴⁶ The socialist ideals did not emerge with Dergue, but with student movements of the 1960s.

As far as organizations engaged in an armed conflict with Dergue were concerned, the TPLF was a pro-communist organization that expressly stated its espousal of Albanian style communism. One of the main concerns for the US in 1991 was to make sure that the new forces dropped socialism as an ideology, to which the TPLF agreed at the London Conference of May 1991. In its *no democracy, no cooperation* principle, the US communicated that its support for the TPLF would depend on the latter’s willingness to adhere to democratic principles instead of the socialist ideals it had carried with itself during the armed conflict.

Overall, the urban conflicts portrayed as White Terror vs Red Terror and the armed conflict in more rural areas of the northern, eastern and western parts of the country were carried out between groups that claimed to be standing for socialist principles. As such, there was no fundamental ideological or philosophical difference among the conflicting parties during Dergue regime. Dergue targeted members and affiliates of opposition forces not due to their opposition to its socialist ideals but because they opposed the means and methods by which Dergue tried to implement socialism. As Stefan Brüne, a West-German political analyst who worked in Ethiopia during Dergue, put it, it was Dergue’s

military implementation [of socialism] which provoked the criticism and resistance, not the nationalization of industry but the absence of civil participation in the decision-making process, not the ideas but the dictatorial means with which the regime put them into practice.⁴⁷

Exceptionally, however, there was an ideological difference between Dergue and the groups it referred to as reactionary forces. The reactionaries included those who sup-

⁴⁵ Colonel Mengistu Hailemariam et al. (Appeals Judgment), 71.

⁴⁶ John Markakis, ‘Garrison Socialism: the Case of Ethiopia,’ MERIP Reports, No. 79, 1979.

⁴⁷ Stefan Brüne, ‘Ideology, Government and Development: The People’s Democratic Republic of Ethiopia,’ *Northeast African Studies* 12(2) (1990).

ported the Haile Selassie regime and feudal lords, against whom the students, peasants, and workers began protesting in the 1960s. The reactionaries were believed to be imperialists and indigenous aristocrats who left the country under poverty, despite the fact of industrialization and commercialization was dominated by foreign capital. Nonetheless, as far as the killing of the Emperor was concerned, the label ‘reactionary’ may not be relevant. It appears the Emperor had ultimately agreed to accept the change. He was known to have said, ‘If the revolution is good for the people, then I too support it’.

Notwithstanding the absence of significant ideological differences among the conflicting parties – the perpetrators and the victims – it should be noted that the violence during Dergue was political violence. As summarized by the SPO in its completion report to the House of Peoples, Representatives in 2010,

Dergue did not kill a single boy based on which [ethnic, racial, national or religious] group the boy belonged to or based on the kind of school the boy went to, but only because of the boy’s alleged affiliation to certain political groups such as the EDU [Ethiopian Democratic Union] and the EPRP.⁴⁸

1.4 Structures of Persecution

1.4.1 Structure of Violence: Involving the Entire State Apparatus

On 15 September 1974, Dergue declared itself ‘head of state’ (ርዕሰ ሰጠር), using a singular marker to indicate that all Dergue officials held such a status collectively and indivisibly.⁴⁹ Most of the decisions to eliminate members of opposition political groups were considered to have been taken by all members acting as one. Dergue, which had already organized itself into a general assembly, standing committee and sub-committees, established new institutions of violence and restructured the existing ones.

As early as 7 July 1974, Dergue had started giving military directives to destroy unidentified individuals and groups who were countering activities that Dergue was carrying out. This was done under the auspices of the Dergue Campaign and Security Department (DCSD), established at the beginning of July 1974 to prepare and

⁴⁸ Translation by the author. See Ethiopian Television, Documentary: findings of human rights abuse during Red Terror era – Part 1 (ETV Documentary part 2, 2010), accessed 27 April 2022, https://www.youtube.com/watch?v=EsLflpn4xBg&ab_channel=EthiopianTV. See also, for instance, FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, (Revised Indictment), 28 November 1995, File No. 1/87. There was no single charge of genocide on racial, religious, ethnic and national groups. See *Dem Yazele Dossie*, 137.

⁴⁹ See Definitions of Power of Provisional Military Administration Council and of its Chairman, Proclamation No.2 /1974, entered into force 15 September 1974, Articles 2 and 3.

coordinate the armed forces for combat activities.⁵⁰ The DCSD had a hit squad and a Daily Situations Follow-up Unit (DSFU).⁵¹ The Department was later reorganized under Dergue Military Committee (DMC) in February 1975 with a mission to destroy individuals and groups with anti-revolutionary agendas.⁵²

In October 1974, Dergue established the Central Investigation Centre (*Maekalawi*), the administration of which was carried out by high-ranking government officials in collaboration with the Dergue Investigation Team (DIT).⁵³ The latter was established initially to carry out investigations into the already arrested and suspected officials of the *ancien régime*.⁵⁴ Later on, the DIT's investigative power was extended to include members of the defence forces who did not accept Dergue's *Ethiopia Tikdem* motto, as well as persons engaged in activities disruptive to Dergue's policies.⁵⁵

In August 1976, four organizations were added to Dergue's institutions of violence. These were: i) the Information Evaluation and Dissemination Unit (IEDU);⁵⁶ii) the Public Security Protection Committee (PSPC);⁵⁷iii) the Revolutionary Information Unit (RIU);⁵⁸ and iv) the Police Force Special Investigation Unit (PFSIU).⁵⁹ These institutions were structured to carry out a coordinated attack against those identified by Dergue as anti-revolution and anti-unity.⁶⁰ The establishment of these institutions of violence meant that Dergue had a whole system set up to destroy opposition political groups.

In the late 1970s, Dergue started reorganizing the institutions of violence to coordinate and intensify the measures it had been taking against anti-revolutionaries. In May 1977, Higher Urban Dwellers Associations (HUDAs) were established by the decision of the Urban Development and Housing Minister.⁶¹ To coordinate its attack

50 See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, (Trial Ruling), 23 January 2003, File No.1/87, 6. The department was composed of nine military members, including lieutenant Colonel Fisseha Desta.

51 FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 10.

52 FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 10.

53 FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

54 FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 10.

55 See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 10.

56 The IEDU was established by order of Colonel Mengistu Hailemariam and had a mandate to track and report persons who could attempt to destabilize Dergue's position of control, its work programs, and its *Ethiopia Tikdem* ideology. FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

57 FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11. The PSPC was established to work in collaboration with the DIT and the IEDU and to report the investigation results to Dergue or its chairman.

58 The RIU was empowered to render opinions regarding whether anti-revolutionaries were to be detained, released or subjected to revolutionary measures. See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

59 The PFSIU was created within the police force with a power similar to that of the RIU. See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

60 FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

61 The reason for the establishment of the HUDAs was, according to the court, to push forward the revolution's offensive. See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

against anti-revolutionaries and to ensure the involvement of public and professional organizations in the violence, Dergue established a Revolution Protection Units Co-ordination Committee (RPUCC).⁶² Efforts were also made to arm the *Kebeles* (the lowest level administrative units) as a part of coordinating ongoing measures against the anti-revolutionaries.⁶³ A counter-anti-revolutionary force was established to remove the enemies of the revolution from schools.⁶⁴ In January and May 1978, orders were issued to ensure that the *Kebeles* and HUDAs carried out interrogations jointly with Dergue investigation units.⁶⁵

In August 1978, the most advanced institution of violence, namely, the Central Revolutionary Investigation Department (CRID), was formed from a merger of the DIT and the PFSIU.⁶⁶ CRID was equipped with modern communication systems, security clearance and a separate hit squad for obliterating anti-revolutionary groups.⁶⁷ It established direct communication with *Kebeles* and HUDAs to carry out its investigations into anti-revolutionaries, thereby strengthening an already centralized investigation system. The intelligence system was further strengthened and organized, particularly after 1978, with the help of the Soviet KGB and the East German State Security Service (Stasi).⁶⁸ Widening this system further, the CRID operated both in Addis Ababa and in the provinces, notably by sending special investigators to the provinces and having detainees transferred from the provinces to its Addis Ababa centre.⁶⁹ As such, this well-thought-through and centralized system of violence was meant to destroy opposition political groups throughout the country.

62 Captain Legesse Asfaw worked in the committee and carried out activities such as submitting requests to Dergue for the purpose of arming the coordinating committee. See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 15.

63 Dergue supplied weapons, gave training to the *Kebeles* and helped them organize themselves. According to the court, this was done as part of an initial promise made by Dergue to arm the *Kebeles* and HUDAs with the weapons necessary to take revolutionary measures against the anti-revolutionaries. However, the Court did not mention when the promises were made and by whom. In the 1970s, it was discussed in several meetings held by Dergue that *Kebeles* in Addis Ababa had begun killing detainees in local prisons and that dead bodies were seen left on different places and on the streets. The meetings also noted that there was a widespread practice of interrogation accompanied by flogging and beatings, as recorded in the diary of Colonel Tesfaye Woldeselessie (who served as the Chairman of the Information Evaluation and Dissemination Committee). See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 12–15.

64 This was carried out under the leadership of Lieutenant Colonel Endale Tessema. See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 14.

65 The order was given by Lieutenant Colonel Debela Dinsa. See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 16.

66 See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

67 See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

68 See B. Mesfin, 'The Architecture and Conduct of Intelligence in Ethiopia (1974–1991),' *International Journal of Ethiopian Studies* 5(1) (2010): 39–70.

69 The CRID had investigation centers in Addis Ababa city administration, Addis Ababa Police Sprinter Division, Eritrea, and Tigray (Mekelle). See Mesfin, 'The Architecture and Conduct of Intel-

1.4.2 Forms of Violence: Every Measure Necessary

The minutes of 19 November 1976 from Dergue's National Assembly sessions revealed that Dergue reached a decision to destroy groups that had opposing political views to the revolution.⁷⁰ Following this decision, a memo written by the then Chairman of Dergue, Brigadier General Teferi Benti, was dispatched to the provinces and the various offices, including the Special Supreme Court Martial, with orders to take *every measure necessary* to implement Dergue's plan to destroy the enemies of the revolution and reactionaries (አድገሪያን).⁷¹ The taking of 'every measure necessary' was reinforced by announcements, orders and campaigns to eliminate the enemies of the revolution.

It was following the assassination of Colonel Atenafu Abate that Colonel Mengistu Hailemariam made a speech known as *Key Shiber Yefafame* ('Let the Red Terror intensify').⁷² In the speech, aired on Ethiopian Radio, Dergue called upon the public to blazon Red Terror in reactionary neighbourhoods, to consider the blocking of anti-revolutionary intrigues its primary job, and to intensify the Red Terror. Dergue also promised to stand with the public in carrying out these activities. At the same time, what Dergue had put in place in September 1977 was the *Netsa Ermija* (free measures). That was a codename denoting the permission given to the local actors (*Kebeles*) to take revolutionary measures (killing anti-revolutionaries) without seeking approval from higher-level government officials⁷³. Later on, an announcement was made by Captain Legesse Asfaw on behalf of Dergue at the Addis Ababa City Council on the occasion of the municipal councillors' oath-taking ceremony in which he pledged on behalf of Dergue to continue the *Netsa Ermija*. He also reassured the *Kebeles* that they would not be held accountable for doing so.⁷⁴

ligence in Ethiopia (1974–1991),' 12. For the SPO case dealing with the CRID special investigators, see FHC, *SPO vs. Teshome Bayyu et al.* (Trial Judgment), 15 January 2009, File No. 07415, 4–5.

⁷⁰ FHC, *SPO vs. Teshome Bayyu et al.* In the Assembly Sessions, a determination was made as to which government organ was responsible for carrying out the decision.

⁷¹ FHC, *SPO vs. Teshome Bayyu et al.*, 8.

⁷² The speech was made following the assassination of Colonel Atenafu Abate. In the speech aired on Ethiopian Radio, Dergue called upon the public to blazon Red Terror in the reactionary neighborhoods, to consider the impeding and halting of anti-revolutionary intrigues its primary job, and to intensify the Red Terror. Dergue also promised that it would stand with the public in carrying out these activities. *Colonel Mengistu Hailemariam et al.*, (Trial Ruling), 8.

⁷³ See Babile Tola, *To Kill the Generation: The Red Terror in Ethiopia*²(Washington, D.C.: Free Ethiopia Press, 1997), 146.

⁷⁴ *Colonel Mengistu Hailemariam et al.*, (Trial Ruling), supra note 9, 8. Based on evidence obtained from the Ethiopian Radio Organization, an announcement was made by Captain Legesse Asfaw on behalf of Dergue at the Addis Ababa City Council at the municipal councilors' oath-taking ceremony. During the event, the Captain asserted that *Netsa Ermija* had been carried out with cooperation between Dergue and the city administration and promised that the cooperation in this regard would continue. The evidence did not indicate when Dergue's *Netsa Ermija* began; it simply talked of the decision to continue it. According to Tola, however, *Netsa Ermija* was launched in September 1977.

Dergue had planned and carried out anti-revolutionary elimination campaigns on several occasions.⁷⁵ Following a study conducted by the Revolutionary Information Unit (RUI) on the identity of anti-revolutionary groups,⁷⁶ a campaign dubbed ‘Hit the Anti-Revolutionaries’ and spearheaded by the Dergue Campaign and Security Department (DCSD) was launched in April 1977. This campaign, which involved the collaboration of civilian and military units, was designed to operate intensively day and night until anti-revolutionaries were entirely destroyed.⁷⁷ A recurrent campaign called *ZemechaMentir* (Identify and Eliminate) was carried out frequently by Dergue at different levels to identify and eliminate members of opposition factions.⁷⁸

As to the specific forms of persecutions, it was established in evidence at the court of law that Dergue killed 9,546 people in pursuance of its plan to destroy enemies of the revolution.⁷⁹ This figure includes the Emperor, whom Dergue assassinated on the grounds that his existence might place false hope in the minds and hearts of the general public that he would reign again. Besides, about 10,000 people were massacred during the aerial bombardments in northern Ethiopia, which were considered war crimes against the civilian population.

In addition to unlawful mass incarcerations, the infliction of bodily injuries in the form of acts of torture were not only rampant but took unimaginable forms. Torture techniques such as the *wofelala* were commonly used to obtain confessions or to impose extrajudicial punishment. These caused the victims such severe suffering that some referred to it as ‘hell on earth’. This was a method in which a person was placed in an upside-down suspended harness and subjected to a lengthy flogging on the inner part of the foot.

Members of opposition political groups were placed in black sites, dungeons, interrogation rooms and torture chambers under living conditions calculated to result in death. The victims were kept in rooms without sufficient food and air, in a manner

See Babile Tola, *To Kill the Generation: The Red Terror in Ethiopia* (Washington, D.C.: Free Ethiopia Press, 1997), 146.

⁷⁵ See also FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, (Trial Judgment), 11 December 2007, File No. 1/87, 4.

⁷⁶ At this time, those considered enemies of the revolution included EPRP, EDU, Tesfa Le Zewede and its affiliates, members of the ELF, ECOP, youth associations. It was stated in the order document that the campaign was carried out by decision of the Provisional Military Government.

⁷⁷ Colonel Mengistu Hailemariam gave an order to launch a ‘Hit the Anti-Revolutionaries’ campaign, which was carried out through the collaboration of the armed forces, the police and other civilian bodies such as the *Kebele* revolutionary guards and workers’ revolutionary guards. See *Colonel Mengistu Hailemariam et al.* (Trial Ruling), 10.

⁷⁸ On October 1977, lieutenant colonel Debela Dinsa gave the order to the *Kebeles* in Addis Ababa. Similarly, on 1 July 1978, Colonel Tesfaye Gebrekidane prepared a procedural guideline based on which the armed forces would be able to identify and eliminate anti-revolutionary forces in the army. *Colonel Mengistu Hailemariam et al.* (Trial Ruling), 10, 14.

⁷⁹ *Dem Yazele Dossie*, Annex, Table II.

that deprived them of proper sleep, and with no access to medical care, and then were left to die in those places after being tortured.⁸⁰

Enforced disappearance was also common. In the post-Dergue investigations, locating the whereabouts of several victims proved challenging. However, there was evidence showing that several individuals were arrested and tortured by the regime at a certain point or that inmates were released from prison but never returned home. Only very few mass graves were exhumed, with even fewer identifications made with the help of forensic teams from Argentina.

What appeared to be a horrifyingly unique way of terrorizing of the public was Dergue's extensive use of the dead (corpses) as a means for perpetrating further violence. Corpses were hauled across and dumped on the streets as families were prohibited from collecting the deceased for burial. Dead bodies were displayed on national television and could be seen hanging in a butcher's shop alongside raw beef on a feast day. Mourning the dead was prohibited all over the country. In some places, market-goers were coerced into walking on the dead bodies left on the streets and market places. Fathers and mothers were forced to step on the dead bodies of their children. Dergue adopted this horrific technique of terrorizing the public and instilling fear and powerlessness in order to suppress, if not altogether eliminate, political dissent. Although common during the Red Terror period, such things were practised as recently as 1989 and 1990.⁸¹

Another form of violence that did not appear during the SPO's court proceedings against Dergue were the so-called 'resettlement' programs, which Dergue adopted under the pretext of a famine relief measure to diffuse perceived and ongoing political opposition. In the words of Dawit Woldegiorgis, a historian,

From the very beginning, resettlement for Mengistu was not a development program but a solution to his social and national security problems. Any dissidents, anyone who created problems or was seen as a security risk, was packed off to a resettlement site. In the minds of the people, resettlement programs were equated with concentration camps.⁸²

1.4.3 The Extent of Persecution: Destroy all Kinds of Opposition

In the 1992 law that established the Special Prosecutor's Office (SPO) to investigate and prosecute Dergue-era crimes, it was stated that the socialist government had perpetrated '*heinous and horrendous criminal acts* which occupy a special chapter in the

⁸⁰ See *Colonel Mengistu Hailemariam et al.* (Revised Indictment), 106–122.

⁸¹ For details, see Tadesse S. Metekia, 'Violence Against and Using the Dead: Ethiopian Dergue Cases,' *Human Remains and Violence* 4(1) (2018): 76–92.

⁸² Dawit Woldegiorgis, *Red Tears: War, Famine and Revolution in Ethiopia* (Trenton: The Red Sea Press, 1989), 285. See also Edmond J. Keller, 'Drought, War, and the Politics of Famine in Ethiopia and Eritrea,' *The Journal of Modern African Studies* 30(4) (1992), 609–624.

history of the people of Ethiopia'⁸³ The regime not only 'deprived the people of Ethiopia of its human and political rights and subjected it to gross oppression', but also 'impoverished the economy of the country by illegally confiscating and destroying the property of the people as well as by misappropriating public and state property.'⁸⁴ In terms of their temporal scope, the acts of persecution lasted for the entire 17 years, as discussed above.

As to the scope of the persecution, it should be noted that the crimes mentioned above were not perpetrated in a protracted manner. They were part of a series of crimes committed over a long period in a widespread and systematic manner, accompanied by a plan to destroy the entire body of opposition political groups. After examining numerous pieces of evidence, Ethiopian courts have concluded that Dergue was established *from the outset* with a plan and intent to destroy opposition political groups, which it carried within itself all along. Such a conclusion resulted from an extensive analysis of factors such as official commands, pronouncements, and campaigns of violence, the establishment and reinforcement of institutions of violence, and direct involvement of state officials in orchestrating and implementing the system of violence.⁸⁵ As such, Dergue's violence has been considered genocide against political groups (politicide).

From a territorial perspective, Dergue did not limit its acts of violence to opposition groups that resided in today's Ethiopia. In addition to extensive measures in what is now known as the State of Eritrea, the violence reached Ethiopian groups in European cities. Dergue's Colonel Tesfaye Woldeselassie, the Chairman of the Information Evaluation and Dissemination Committee, sponsored assassination missions in Italy (Rome) and Germany (Berlin) targeting members and leaders of the opposition political groups in the diaspora.⁸⁶

1.5 Victim Groups

During Dergue regime, tens of thousands of Ethiopia's best-educated were selectively killed; thousands were systematically tortured, injured, jailed or forcefully disappeared. Peasants were starved and forcefully relocated, and hundreds of thousands died because of malnutrition and disease.⁸⁷ Although there is no official statement re-

⁸³ SPO Proclamation, Preamble, para 2. [Emphasis added].

⁸⁴ SPO Proclamation, Preamble, para 2.

⁸⁵ For details, see Tadesse S. Metekia, *Prosecution of Core Crimes in Ethiopia: Domestic Practice vis-à-vis international standards* (Lieden: Brill, 2021), 272–282.

⁸⁶ See FHC, *SPO vs. Colonel Tesfaye Woldeselassie Eshete*, (Revised Indictment), 09 November 2000, File No. 268/85, 10–11, 28–30.

⁸⁷ See Remy Prouveze and Nadia Brenaz, 'International and domestic prosecutions,' in Cherif Bassiouni (ed.), *The Pursuit of International Criminal Justice, Vol. I: A World Study on Conflicts, Victimization, and Post-Conflict Justice* (Antwerp: Intersentia, 2010), 386–387; See Human Rights Watch, 'Evil

garding the number of victims, some have estimated that Dergue regime took the lives of as many as 725,000 Ethiopians.⁸⁸ Others put the estimate close to 2,000,000.⁸⁹

As for the Red Terror, from 10,000 to 20,000 Ethiopians were killed in Addis Ababa alone.⁹⁰ It is believed that the rest of the provinces saw comparable numbers of fatalities, if not more. The estimate by the EPRDF government put the number of deaths in Addis Ababa at 55,000.⁹¹ According to Tola, the Red Terror took the lives of as many as 150,000 Ethiopians. According to Amnesty International, in just two months between December 1977 and February 1978, about 30,000 people were detained in Addis Ababa alone.⁹² Yet, as noted above, the Red Terror was not the only campaign of violence orchestrated and implemented by Dergue. The Red Terror was itself commonly misperceived as a violence that targeted only the Ethiopian People's Revolutionary Party (EPRP). As such, any hasty reference might amount to furthering the mockery of the other victims, as also cautioned by the SPO.

One may divide victims of Dergue into two broad categories based on political ideology or form of opposition. Based on the former, Dergue victims were referred to by their perpetrators as reactionaries and anti-revolutionaries. Reactionaries were feudal landlords, officials and individuals who supported the Haile Selassie regime for either political, religious or social status. 'Anti-revolutionaries' was a term used by Dergue to refer to all kinds of groups that were opposed to the military revolution and how Dergue was implementing socialism in Ethiopia.

Based on their forms of opposition, Dergue's victims could be categorized as either warring or non-warring groups. With the OLF and the TPLF being the pioneers in taking up arms against Dergue, the civil war that took 17 years involved several warring groups. The groups referred to themselves as liberation fronts or people's democratic organizations and most of them were established to fight against injustices on

Days: 30 Years of War and Famine in Ethiopia' (Report of African Watch, September 1991) 1, accessed 20 September 2020, <https://www.hrw.org/sites/default/files/reports/Ethiopia919.pdf>. [Hereinafter: Thirty Years of Evil Days]; Yves Santamaria, 'Afro communism: Ethiopia, Angola, and Mozambique,' in Mark Kramer et al. (ed.), *The Black Book of Communism: Crimes, Terror, Repression* (Cambridge: Harvard University Press, 1999) 683–704.

88 According to African Watch Report, 500,000 'famine deaths' occurred between just 1982 and 1986, while the regime caused between 225,000 and 317,000 deaths through human rights violations. See Human Rights Watch, 'Evil Days: 30 Years of War and Famine in Ethiopia' (Report of African Watch, September 1991), accessed September 30, 2020, <https://www.hrw.org/sites/default/files/reports/Ethiopia919.pdf>, 172.

89 See Paulo Milkias, 'Mengistu Haile Mariam: Profile of a Dictator,' *Ethiopian Review* 4(1) (1994): 57–59, 57.

90 Human Rights Watch, 'Evil Days: 30 Years of War and Famine in Ethiopia,' supra note 88.

91 See Bahru Zewde, 'The history of the Red Terror: Contexts and Consequences,' in Kjetil Tronvoll et al. (eds.), *The Ethiopian Red Terror Trials: Transitional Justice Challenged* (Martlesham: James Currey, 2009), 17–32, 30.

92 Amnesty International (AI). 1978. 'Human Rights Violations in Ethiopia', accessed 30 September 2020, <https://www.amnesty.org/download/Documents/204000/afr250101978en.pdf>, 8.

behalf of their respective ethnic groups. Non-warring groups included mainly the EPRP and MEISON. The EPRP, known for its White Terror, a violent campaign aimed at assassinating Dergue and MEISON officials, had a short-lived armed wing that used to be known as the Ethiopian People's Revolutionary Army (EPLA).

It is noteworthy that Dergue was indiscriminate in terms of identifying opposition groups it targeted for persecution. As Ethiopian courts have unanimously concluded in Dergue trials, the persecution during Dergue regime targeted *all* (ሁሉንም) political opposition groups, that is, each one of the numerous political opposition groups.⁹³ The violence was more indiscriminate in the sense that it did not spare those who were less active and had no direct involvement in the opposition, such as religious dignitaries. For example, Abune Tewoflos Woldemariam, the patriarch of the Ethiopian Orthodox Church, and Gudina Tumsa, a priest and general secretary of the Ethiopian Evangelical Church Mekane Yesus, were executed on the allegation that the former was a 'reactionary' (pro-Haile Selassie regime) and the latter 'anti-revolutionary' (as an alleged member of the OLF).

1.6 Those Responsible

Over 5,000 officials, members and affiliates of Dergue regime were identified as responsible for crimes committed between 1974 and 1991. Not all of these individuals had held a position of authority in Dergue administration (the government, the party, or mass organizations). In addition to policymakers and field commanders, private individuals were responsible for atrocities. The violence reached its height by involving a large number of people referred to as personal informants, associates, chauffeurs,⁹⁴ 'cooperating individuals',⁹⁵ or 'progressive individuals'.⁹⁶

Colonel Mengistu Hailemariam, the chairman of the PMG, the president of the PDRE and the commander-in-chief of the armed forces, was by all standards the most responsible person. He announced the Red Terror and called for its intensification – not to mention that he oversaw the whole system of persecution through the country both in- and outside of the context of armed conflict. In one of the examples

⁹³ See *Colonel Mengistu Hailemariam et al.* (Trial Ruling), 5; *Colonel Mengistu Hailemariam et al.* (Appeals Judgment), 70.

⁹⁴ See *Dem Yazele Dossie*, 137. See also FHC, *SPO vs. Teshome Ashenie* (Indictment, 29 June 2000), File No. 1937/1992, 1; FHC, *SPO vs. Ademasu Amare et al.* (Revised Indictment), 7 July 1998, File No. 654/1989, 3; see in particular defendant number 16.

⁹⁵ See e.g. defendants number 28, 54, 117, 140, 141, and 142 in FHC, *SPO vs. Gesegesse Gebremeskel Aterega et al.*, (Indictment), 23 December 1996, File No. 03099/1989, 4–5, 12, 14. Several defendants were prosecuted as cooperating individuals in SNNPRS SC, *SPO vs. Mekonnen Gelan et al.*, (Revised Indictment, 22 May 2001), File No. 1338/97, 1–20. See the details of defendants number 132, 138, and 152 in OSC, *SPO vs. Brigadier General Tedela Desta et al.* (Revised Indictment, 10 October 1999), File No. OSC 1/1989, 13–14.

⁹⁶ See defendants number 41 and 46 in *Gesegesse Gebremeskel Aterega et al.* (Indictment), 5.

that depict his mercilessness, Mengistu had his presidential palace built over the Emperor's grave, on top of which he literally sat and ruled the country for 17 years.

On top of giving orders, initiating and organizing campaigns, and making public announcements concerning the elimination of members and affiliates of political opposition groups, Dergue higher officials were responsible for arming *Kebele* administrations,⁹⁷ supervising prisons,⁹⁸ and running the CRID.⁹⁹ Even more, they directly and regularly participated in deciding measures to be taken against anti-revolutionaries. In particular, officials at National and Public Security Affairs (NPSA) /ሀገርናሕዝብደህንነትጉዳይሃላፊዎች/ were responsible for rendering the final decision on the fate of anti-revolutionaries.¹⁰⁰

The usual procedure was well-oiled and followed pre-determined steps. After receiving investigation results from the Director of the DIT, the NPSA officials (such as Lieutenant Colonels Kassahun Tafesse and Teka Tulu) had the power to send their final decisions to the DIT or directly to the DCSD.¹⁰¹ Their decisions often contained death sentences, usually coded in phrases such as “take a revolutionary measure, move them to the district, take them across, join them with Jesus, and send them with any transport available”.¹⁰²

An alternative procedure was also available: NPSA officials could pass on their decisions to the general secretary of Dergue, Captain Fikreselassie Wogederesse, or the deputy general secretary, Lieutenant Colonel Fisseha Desta.¹⁰³ The two could either change or approve the decisions and send them back to NPSA officials with instructions to notify the DCSD.¹⁰⁴ In 1971, when the CRID replaced the DIT and the PFSIU, both the usual and the alternative procedures were maintained.¹⁰⁵

Regional governors, most of whom were permanent members of Dergue, were the key players in intensifying the persecution during the regime. They had either their own special forces to take counter-revolutionary measures or had the liberty to invite special investigators from the CRID's central office to undertake torture and execu-

97 The list of officials included: Captain Fikreselassie Wegderess, Colonel Tesfaye Gebrekidane, Colonel Demessie Duressa, Letenal Colonel Fesseha Desta. See *Colonel Mengistu Hailemariam et al.* (Trial Ruling), 13.

98 According to documentary evidence produced by the SPO in this regard, the prison administration committee included Major Kassaye Aragaw, *meto-aleqa* Petros Gebre, *mikitelmeto-aleqa* Aragaw Yimer, Major Dejene Wolde Agegnehu, *miktelmeto-aleqa* Fesseha Andeto and others. See *Dem Yazele Dossie*.

99 The CRID used as its office an off-site location, Prince Asarat Kassa's villa, and was run by Lieutenant-Colonel Fisseha Desta. See *Colonel Mengistu Hailemariam et al.* (Trial Ruling), 11.

100 See *Colonel Mengistu Hailemariam et al.* (Trial Ruling), 12.

101 See *Colonel Mengistu Hailemariam et al.* (Trial Ruling), 13.

102 Tadesse S. Metekia, *Prosecution of Core Crimes in Ethiopia: Domestic Practice vis-à-vis international standards* (Lieden: Brill, 2021), 281.

103 Tadesse S. Metekia, *Prosecution of Core Crimes in Ethiopia*, 281.

104 Tadesse S. Metekia, *Prosecution of Core Crimes in Ethiopia*, 281.

105 Tadesse S. Metekia, *Prosecution of Core Crimes in Ethiopia*, 281.

tions. The most monstrous of all was Melaku Teferra, governor of the Gonder province, followed, arguably, by Gesges Gebremeskel Ateraga, the governor of the then Cheha district in west-central Ethiopia. The two had, in the words of the Federal Supreme and High Courts of Ethiopia, an ‘addiction to killing’ (የመግደል ስህ). Melaku Teferra, responsible for killing 971 people, left behind a uniquely horrifying memory. In a poignant depiction of the scale of his mercilessness in detaining, killing, and forcefully conscripting their sons into the army, mothers in the Gonder province of northern Ethiopia had poetized him as:

MelakuTeferra, God’s younger brother;
pardon my son, and I would not bear another.¹⁰⁶

Concerning the armed conflict, 23 military officers ranging from major to brigadier general, most of whom were air force pilots trained to conduct airstrikes, were held responsible. This included Captain Legesse Asfaw, a permanent member of Dergue and a decorated military captain in charge of military operations in the northern part of the country, the then Tigray region. He had special powers that made him even superior to the Ministry of Defense as far as military operations in Tigray were concerned.¹⁰⁷

1.7 Places of Persecution

As is commonly the case with repressive regimes, the greatest commonplace of repression during Dergue were the prisons. In Addis Ababa, the most notorious ones were the central prison, Kerchele, and the central investigation centre, Meakelawi. Kerchale had a separate wing that was known as Alem-Bekagn, an infamous incarceration and torture chamber. During the Red Terror, Dergue converted *Kebeles* and Higher Urban Dwellers Associations into investigation and detention centres. It was the establishment of the National Revolutionary Operations Command pursuant to Proclamation No.129 of 1977 that had in effect transformed all government offices into detention centres by empowering government offices at all levels to identify and detain anti-revolutionary and anti-unity forces for up to six months just on the ground of suspicion of involvement in anti-revolutionary, anti-unity, or anti-operations acts.¹⁰⁸

106 Translation by the author. The original (Amharic) lyrics read:

መላኩ ተፈራ የግዜር ታናሽ ወንድም
ያዛሬን ማርልኝ የገገን አልወልድም

107 For details, see Metekia, *Prosecution of Core Crimes in Ethiopia*.

108 National Revolutionary Operation Command Proclamation, Proclamation No. 129 of 1977, entered into force 27 August 1977.

The provision of *Netsa Ermija*, free measures, created numerous killing squads across the country where *Kebeles*, factories, and schoolyards became places of persecution by revolutionary guards. Military camps and command were also notorious places of persecution where civilians were arrested, detained and tortured. Several military compounds were later on found to be mass graveyards. Similarly, Dergue used compounds of security and intelligence departments not as just places of detention and torture but also of killing and mass burial.

Offline locations of persecution were common too. In Addis Ababa, private mansions and villas became torture chambers. Victims arrived at the locations blindfolded. Some of these locations were known by Dergue security forces by code names such as the *Setan Bet* (Satan House) and Bermuda.¹⁰⁹

It was also common for executions to take place in strictly official sites. Between 1976 and 1978, about 70 dead bodies were collected from the *Arat-Kilo* Palace (presidential Palace) on a daily basis and dumped into mass graves.¹¹⁰ The Emperor was murdered in the presidential palace, and, as discovered in the early 1990s and mentioned above, Colonel Mengistu Hailemariam had his office built literally over the grave of the Emperor.¹¹¹

Also, streets and marketplaces were places of persecution. Victims were beaten and killed on the streets and in marketplaces. Such was especially the case in the context of Dergue's violence against the Ethiopian public. As recorded in the cases of *Mengistu et al.* and in *Debela Dinsa Wege et al.* alone, the SPO recorded that Dergue dumped and dragged over 1,416 dead bodies on and across the streets of Addis Ababa.¹¹² Bodies were left on the streets and watched by government agents and informants so that friends and family members would not collect them. Spread throughout every town in the country, this practice was meant to terrorize the public. Linked to this form of violence was the use of national television as a means to terrorize even the wider public. Dead bodies were purposely displayed on TV so that Ethiopians would be terrified and refrain from engaging in activities opposed to Dergue.

1.8 The Form in which the Regime was Overcome

Ethiopians and Eritreans struggled against Dergue's military regime by violent means that involved armed and non-armed activities. The situation during the period of the Red Terror has been commonly understood as a violent struggle among the ruling and opposition groups, notably through its colloquial Amharic reference *Tenneqe* (ጥንቅቅ). The most notable non-armed struggle against Dergue came from the

¹⁰⁹ See *Dem YazeleDossie*, 69–71.

¹¹⁰ See *Dem YazeleDossie*, 13.

¹¹¹ Mengistu et al. (Appeals Judgment of 26 May 2008), Federal Supreme Court, File No. 30181, 95.

¹¹² For details, see Tadesse S. Metekia, "Violence Against and Using the Dead: Ethiopian Dergue Cases", *Remains and Violence* 4(1) (2018): 76–92.

EPRP, which after a brief period of relatively peaceful protest, launched the so-called White Terror – a sporadic campaign of assassination that targeted members and allies of Dergue. As known by its other labels, such as ‘urban guerrilla warfare’, the assassinations and terrorizations were carried out in the cities, mainly in Addis Ababa.¹¹³

For the armed struggle which lasted the entire 17 years of Dergue, various armed groups engaged in a protracted and lengthy civil war which brought about Dergue’s complete defeat in 1991.¹¹⁴ Of the liberation fronts, the Eritrean Peoples’ Liberation Front (successor to the Eritrean Liberation Front (ELF)) was the first to embark on the long journey of what could be characterized as a war of liberation, which ended in 1991 with the creation of the independent State of Eritrea. The Tigray Liberation Front (TPLF), which started an armed struggle in 1975 from the northern part of the country, was later joined by other groups and formed the Ethiopian Peoples’ Revolutionary Democratic Front (EPRDF), which succeeded in overthrowing Dergue in May 1991.¹¹⁵ In the East, the Oromo Liberation Front (OLF) had fought Dergue mainly in eastern Ethiopia until it was forced to re-establish itself in the western part of the country.¹¹⁶ Other groups, such as the Ethiopian Democratic Union (EDU) and the Ethiopian Peoples’ Revolutionary Army (EPRA), the armed wing of the Ethiopian Peoples’ Revolutionary Party (EPRP), were involved in relatively less significant armed conflicts in the 1970s.¹¹⁷

2 Transitional Justice

2.1 Political and Institutional Changes

Unlike conflicts in many other places, the Ethiopian civil war ended in 1991 with a total defeat of Dergue, leaving the incoming powers with unfettered discretion to es-

113 As opposed to the armed struggle of the peasants simultaneously carried out in the rural parts of the country, the White Terror was not an armed struggle and, as it is generally understood, had no connection to the armed conflicts and thus to actions that could potentially constitute war crimes.

114 See Tareke, *The Ethiopian Revolution*, supra note 7, 59.

115 See Aregawi Berhe, *A Political History of the Tigray People’s Liberation Front (1975–1991): Revolt, Ideology and Mobilisation in Ethiopia* (PhD Dissertation, Vrije Universiteit Amsterdam, 2009), 313–345.

116 Martin Plaut, ‘Ethiopia’s Oromo Liberation Front,’ *Review of African Political Economy* 33(109) (2006): 587–593; Andargachew Tiruneh, *The Ethiopian Revolution 1974–1987: A Transformation from an Aristocratic to a Totalitarian Autocracy* (Cambridge: Cambridge University Press, 1992), 366–367.

117 These groups were more active in what was referred to as the White Terror than in the armed struggle. Their less intense armed struggle did not last long, as both groups were defeated by the TPLF by the end of the 1970s. See Tareke, *The Ethiopian Revolution*, supra note 7, 86–88; Tiruneh, *The Ethiopian Revolution 1974–1987*, 213–214.

establish a new political order. Dergue's defeat was announced in May 1991 in the middle of the US-brokered London Peace Talks, where representatives of the government and rebel forces (EPLF, OLF and TPLF) convened to discuss the Ethiopian transition. The London Peace Talks were the only multi-party peace talks during the lengthy civil war and ones that were possible only following the end of the Cold War and the withdrawal of Soviet military advisers from Ethiopia. However, it was concluded without significant agreement, except that the EPRDF would convene a follow-up conference in Addis Ababa no later than 1 July 1991 to discuss the details of the transitional period.

Within a month after defeating and ousting Dergue and detaining thousands of its members and affiliates in June 1991, the EPRDF (a group headed by the TPLF) dissolved the entire military and security apparatus of the past regime. Within a very short time, the EPRDF, together with the EPLF and the OLF, demobilized the whole army of Dergue. Dergue officials were told to surrender within 48 Hours on 30 May 1991. By the end of June 1991, TGE issued directives to abolish the Ministry of Defence, the Ministry of Interior, and the WPE and associations formed by it.

Consequently, a Peace and Democracy Transitional conference of Ethiopia was convened in Addis Ababa from 1 to 5 July 1991. The conference adopted the Transitional Period Charter as drafted,¹¹⁸ and a Transitional Period Council of Representatives was formed, allocating the majority of its seats to the EPRDF. Most important was that the conference approved the establishment of the Transitional Government of Ethiopia (TGE), which was given a legal force by the Transitional Period Charter for the initial period of no more than two and half years.

The charter, which became the supreme law of the land (an interim constitution) for the duration of the transitional period,¹¹⁹ marked a significant departure from the Dergue regime in various respects. It provided that freedom, equal rights and self-determination of all peoples be the guiding principles of political, economic and social life as Ethiopia was starting a new chapter of restructuring itself democratically. It was indeed a clean slate where the previous regime was removed altogether, as the establishment of the TGE meant the dissolution of the WPE, the suspension of the PDRE Constitution of 1987 and, most importantly, the end of socialism as a political ideology.

Upon the promises of the Transitional Period Charter, a Constitutional Commission was set up in 1993 to prepare a draft constitution. Accordingly, four years after the establishment of the TGE, the Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution), the most comprehensive in the country's constitutional history, came into force on 21 August 1995 by significantly improving the promises of

118 Transitional Period Charter of Ethiopia: Proclamation No. 1/1991, entered into force 22 July 1991, Article 6, accessed 20 March 2021, <http://www.ethcriminalawnetwork.com/system/files/The%20Transitional%20Period%20Charter%20of%20Ethiopia.pdf>.

119 Transitional Period Charter of Ethiopia: Proclamation No. 1/1991, Article 18.

the Transitional Period Charter.¹²⁰ The constitution, together with Proclamation No. 2 of 1995, officially established a Federal Democratic Republic of Ethiopia (FDRE) as opposed to Dergue's unitary state structure. The constitution adopted multinational federalism and structured the country into nine autonomous regional governments with guarantees of self-determination. It also included a most controversial opt-out clause, i. e. the right to secession from the federation (Article 39 of the constitution).

With the coming into force of the 1995 constitution, the FDRE became, at least theoretically, the exact opposite of the PDRE in the sense that it was, unlike its predecessor, founded upon a multi-party system, equal state recognition of all Ethiopian languages, a parliamentary system of government, a comprehensive list of human and democratic rights, and an independent National Election Board to conduct in an impartial manner free and fair elections in federal and state constituencies.

The constitution also provided for the establishment of several institutions vital for building democratic culture by disconnecting the system from its repressive past. The most significant development was a Human Rights Commission, a move believed to be a result of policy influence from the US, which had emerged as the important economic and political ally of the post-Dergue government in Ethiopia. The Ethiopian Human Rights Commission (EHRC) was formally established five years later by the House of Peoples' Representatives with objectives ranging from creating public awareness about human rights to ensuring corrective measures when human rights violations occurred.¹²¹ In the same year, the Institution of the Ombudsman was established by Proclamation No. 211/2000 to protect citizens from problems arising from executive maladministration.

After undertaking a lengthy Civil Service Reform Programme (started in 1994) that identified, among other things, a lack of coherent strategy and laws for ensuring ethical standards, and after conducting a corruption survey, the Federal Ethics and Anti-Corruption Commission was established in 2001 by law number 235/2001 with a mandate to prevent and prosecute acts of corruption and impropriety. The establishment of these human rights institutions was meant to complement the underdeveloped judicial sector in promoting respect for human rights and good governance. In that respect, the country has adopted several reforms to ensure the effectiveness and independence of the judiciary. The creation of an independent judiciary was already envisaged by the Transitional Period Charter (Article 9), and elaborate provisions were included in the FDRE Constitution (Articles 78–81).

As for the actual elections, the TGE held local elections in May 1992 following some 'snapelections' in April 1992, a process that installed EPRDF representatives

¹²⁰ The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, entered into force 21 August 1995.

¹²¹ Proclamation No 210/2000, Ethiopian Human Rights Commission Establishment Proclamation, Article 5.

at all levels.¹²² Election disputes deepened the misgivings between the EPRDF-TPLF and the OLF and ultimately resulted in the latter withdrawing from the TGE on 23 June 1992. A more competitive nationwide election was held in May 2000, in which the EPRDF emerged victorious, despite allegations of widespread election fraud. In May 2005, Ethiopia held elections which, although reportedly marred by irregularities, were considered relatively peaceful and were arguably the closest to genuine elections the country has ever experienced.¹²³ Nonetheless, a post-election crisis was triggered in early June 2005 when the Coalition for Unity and Democracy (CUD), the second largest opposition coalition at that time,¹²⁴ refused to accept the results that declared a narrow victory for the ruling party, the EPRDF, alleging electoral manipulation. In turn, the EPRDF accused the CUD of conspiring to overthrow the government by force and rejected reports of international observers, which largely confirmed the CUD's claims. Violence ensued and both sides contributed in varying degrees to the loss of life and property that accrued from the beginning of June until the end of November 2005. Since then, the EPRDF has persistently declared itself the landslide winner in elections, held in 2010 and 2015.

2.2 Prosecution

In the beginning, the TGE did not take any significant steps aimed at responding to past crimes. In particular, an independent investigation into Dergue-era violence, which could have been carried out by setting up specialized bodies such as a commission of inquiry, never occurred. The silence was unexpectedly broken on 8 August 1992, when the TGE established the Office of the Special Prosecutor (SPO) to prosecute crimes committed during the Dergue regime. The relevant part of the proclamation announced the decision to prosecute in the following terms:

[I]n view of the fact that the historical mission of the Ethiopian People's Revolutionary Democratic Front [EPRDF] has been accomplished, it is essential that higher officials of the WPE [Workers Party of Ethiopia] and members of the security and armed forces who have been detained at the time of the EPRDF assumed control of the country and thereafter and who are suspected of having committed offences, as well as representatives of urban dwellers associations

¹²² Lovise Aalen et al., *Ethiopia since Dergue: A decade of democratic pretension and performance* (Zed Books: London, 2002), 30–32.

¹²³ See for example, Anders Wijkman, *European Parliament Delegation to Observe Federal and Regional Parliamentary Elections in Ethiopia: A Report, 12–17 May 2005* (June 2005), Annex C, 1, accessed 28 March 2019, http://www.europarl.europa.eu/intcoop/election_observation/missions/2004–2009/20051505_ethiopia.pdf. See also Human Rights Watch, 'World Report 2006: Ethiopia, Events of 2005', 1, accessed 29 September 2019, <https://www.hrw.org/world-report/2006/country-chapters/ethiopia>.

¹²⁴ The CUD (ቅንጅት (Kinjit) in Amharic) was a coalition of four parties: The All Ethiopia Unity Party (AEUP), the Ethiopian Democratic League (EDL), the United Ethiopian Democratic Party-Medhin (UEDP-Medhin), and the Rainbow Party (Movement for Democracy and Social Justice).

and peasant associations, and other persons who have associated with the commission of said offenses, must be brought to trial.¹²⁵

It was not immediately clear why the TGE decided to prosecute Dergue. In a manner that mirrored the TGE's decision to prosecute, the FDRE Constitution prohibited the possibility of granting amnesty for gross human rights violations. Article 28 of the constitution reads:

Criminal liability of persons who commit crimes against humanity, so defined by international agreements ratified by Ethiopia and by other laws of Ethiopia, such as *genocide*, summary executions, forcible disappearances or torture shall not be barred by statute of limitations. Such offences *may not be commuted by amnesty* or pardon of the legislature or any other state organ.¹²⁶

By prosecuting Dergue and outlawing amnesty for gross human rights violations in its constitution, Ethiopia wanted to establish a new political order that disassociated it from its past and the experiences of some countries in Africa and Latin America. As highlighted in the *travaux préparatoires* of the constitution, the Constitutional Commission discussed in 1993 and 1994 that:

[I]n some countries in Africa and Latin America a culture of impunity has developed in which dictator governments remain unaccountable for the atrocities they perpetrated against their own people, which encourages a recurrence of similar atrocities. It was also stated during the transitional period that amnesty should not be granted in relation to offences involving violations of human rights.¹²⁷

The SPO's prosecution of Dergue-era crimes took almost two decades, from 1992 to 2010. Including the Federal Supreme Court, which had served as the court of appeal, Dergue trials were conducted by seven courts all over Ethiopia. The Federal High Court was the one that oversaw the most critical cases, such as the cases of *Colonel Mengistu et al.* and *Captain Legesse Asfaw et al.* Five other regional supreme courts (in Oromia, Amhara, Tigray, Harari, and SNNPRs) have adjudicated various crimes committed during Dergue regime.

¹²⁵ Wijkman, *European Parliament Delegation to Observe Federal and Regional Parliamentary Elections in Ethiopia*, Preamble, para. 4.

¹²⁶ The Constitution of FDRE, Article 28(1) [Emphasis added].

¹²⁷ The discussion did not mention the specific countries to which it was referring. See 'The Minutes of the 84th Ordinary Session of the Constitutional Committee (24 February 1994)' in The Constitutional Commission, 'Minutes, Vol. II: Ordinary Sessions No. 51 – No. 88 held from 2 November 1993 to 3 April 1994' (Addis Ababa: FDRE House of Federations, Unpublished), 199. Translation by the author. The original (Amharic) version reads:

የሚለውበአ.ትዩኤድዮሁኔታአንዲሁምበአፍሪካበላቲንአሜሪካሀገሮችአምባገነንግዢዎችበህዝብላይግፍከፈጸሙበኋላበሰሩትወንጀልተ-
ጠያቂሳይሆኑየሚቀሩበትሁኔታአየተለመደናለተመሳሳይድርጊትየሚጋብዝመሆኑንበሽግግርሩወቅትምሰብአዊሙባትንከተመለከተለተሰሩወንጀ-
ሎችምሀረትየማይሰጥመሆኑትገልጿል።

The SPO prosecuted both international and domestic crimes. As for *international crimes*, the SPO identified: i) the crime of genocide under Article 281 of the Penal Code,¹²⁸ ii) war crimes against the civilian population pursuant to Article 282 of the Penal Code,¹²⁹ and iii) provocation and preparation to commit, permit or support acts that constitute genocide and war crimes in violation of Article 286 of the Penal Code.¹³⁰ By genocide, the SPO referred to genocide against political groups, something often coined by social scientists as *politicide*.¹³¹

The *domestic crimes*, on the other hand, included: murder (Article 522 of the Penal Code),¹³² grave wilful injury (Article 538 of the Penal Code),¹³³ unlawful arrest or detention (Article 416 of the Penal Code),¹³⁴ abuse of power (Article 414 of the Penal Code),¹³⁵ aggravated property damage (Article 654 of the Penal Code),¹³⁶ and rape (Article 589 of the Penal Code).¹³⁷ In the large majority of its cases, the SPO prosecuted domestic crimes mainly as alternative charges to genocide. There were also instances in which it prosecuted domestic crimes as independent and additional charges.¹³⁸ Yet some SPO cases have dealt exclusively with purely domestic crimes committed with no apparent political motivation and without any connection to genocide or war crimes.

By the time Dergue trials were completed in 2010, 5,119 individuals had been indicted, out of which 3,583 were convicted and punished (Tab. 1). Nonetheless, it should be noted here that many officials and affiliates of the Dergue regime were not punished, because they had already managed to leave the country. Given that extradition efforts were unsuccessful for several reasons, Ethiopian courts had to proceed with a huge number of in absentia trials. 2,188 of 5,119 defendants were tried in their absence.¹³⁹ Out of the 73 high-ranking Dergue officials prosecuted in *Mengistu et al.*, 20 were prosecuted in absentia, including Colonel Mengistu Hailemariam, who

128 *Colonel Mengistu Hailemariam et al.* (Revised Indictment), supra note 87, 7–8.

129 See FHC, *SPO vs. Legesse Asfaw et al.* (Indictment), 3 May 2001, File No. 03116.

130 Provocation and preparation to commit, permit or support acts of genocide was the first ever charge brought by the SPO against Dergue officials (106 individuals). See *Colonel Mengistu Hailemariam et al.*, (Revised Indictment), Count 1.

131 See B. Harff and T. R. Gurr, ‘Victims of the State: Genocides, Politicides and Group Repression since 1945,’ *International Review of Victimology* 1(1) (1989): 23–41.

132 See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.* (Revised Indictment), 87.

133 See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.* (Revised Indictment), 87.

134 See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.* (Revised Indictment), 87.

135 See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.* (Revised Indictment), 87.

136 See, for instance, OSC, *SPO vs. Brigadier General Tedela Desta et al.* (Initial Indictment), 20 September 1999, File No. 28/85.

137 See the Special Prosecution Office, ‘Annual Report to the House of Peoples’ Representatives of Ethiopia’ (Addis Ababa, 04 February 2010), 10. [Hereinafter: SPO’s Annual Report to the HPR (2010)].

138 See SPO’s Annual Report to the HPR (2010). For example, counts 210 (unlawful arrest and detention) and 211 (abuse of power) were independent charges as ordinary crimes.

139 See *Dem Yazele Dossie*, 444.

fled to Zimbabwe a week before the total downfall of his regime.¹⁴⁰ Of the 23 defendants in war crimes trials (*Capitaine Legesse Asfaw et al.*), only five were present in court.

Tab. 1: Summary of number of persons indicted, convicted, and acquitted in Dergue trials

Persons indicted	convicted	acquitted	convicted in absentia	acquitted in absentia	Overall conviction rate
	3,583	1,536	1,308	880	69.9%
Sentences imposed					
	Death	Life	15 to 25 years	≤ 15 years	Minimum Sentence
5,119	52	182	921	2,028	2 years

According to the FDRE Constitution and the criminal code, the death penalty is reserved for serious/grave criminal offences, and its pronouncement depends on the individual circumstances of the offender. Of the death sentences, 18 were pronounced by the Federal Supreme Court against members of Dergue's Standing Committee, the regime's highest executive organ, and Colonel Mengistu Hailemariam.¹⁴¹ Also, Legesse Asfaw was sentenced to death for ordering the indiscriminate bombing of undefended localities and towns in 1983 and 1988, resulting in the death of more than 10,000 civilians in Chila, Wukro, and Hawzien. Nonetheless, none of the 52 convicts in Dergue trials was executed. Although Ethiopia is not an abolitionist state, it seems to have limited the enforcement of death sentences to offences in which the perpetrators were top-ranking military or government (Ethiopian or foreign) officials.¹⁴²

In connection to criminal prosecutions, it is worth noting that the TGE felt compelled to establish the SPO as the only transitional justice institution and ensure a process that chose prosecution as the only official means of responding to past abuses. The reason for this was not so clear. Various factors were mentioned on different occasions to explain the TGE's motivations in bringing all Dergue officials to justice. As discussed further below, some of the alleged factors included the TGE's conviction to uphold an international obligation to prosecute atrocity crimes, the TGE's desire to drive political legitimacy, and Dergue's total defeat.

¹⁴⁰ See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.* (Trial Judgment), 77.

¹⁴¹ See *Colonel Mengistu Hailemariam et al.* (Appeals Judgment), 95.

¹⁴² See Tadesse S. Metekia, 'Punishing Core Crimes in Ethiopia', 160–190.

2.2.1 The Alleged Commitment to Implement the Obligation to Prosecute

Following the downfall of Dergue, international organizations communicated to the EPRDF that there was an international duty to prosecute the crimes committed in Ethiopia.¹⁴³ Nonetheless, the TGE did not explain its decision to prosecute Dergue from the perspective of a duty to prosecute until some years later. But in 1994, the SPO stated that ‘implicit in the decision to prosecute was the acceptance of the TGE of its international and national legal obligations to investigate and bring to justice those responsible for Dergue-era crimes’.¹⁴⁴

2.2.2 The Absence of an Actual or Perceived Adversary

Unlike several other countries where the outgoing and incoming governments had their own bargaining powers for negotiating terms of the transition, the 1991 revolution in Ethiopia resulted in a total defeat of Dergue. As a result, the country had the chance to begin the new era on the terms of the incoming powers alone. Ethiopia in 1991 differed from how countries such as Chile or Argentina dealt with their sea-changes around the same time. In Chile, General Augusto Pinochet Ugarte, under whose control the military power remained until 1990, explicitly warned the new government not to ignore the 1978 amnesty¹⁴⁵ and ‘not to touch a single hair of a single soldier’.¹⁴⁶ Likewise, in Argentina, where the shift in power balances played a significant role in shaping the country’s search for justice, the military actively resisted accountability by enacting a blanket self-amnesty law for crimes committed between 1973–1982.¹⁴⁷ Dergue was totally defeated by the EPRDF forces and it was already noted in 1991 that Dergue was nothing more than a harmless shell which had no bargaining leverage of any kind in the Ethiopian transition.

Ethiopia was not in a similar position to South Africa in its changes either, where the introduction of amnesty in the truth and reconciliation process was partly needed so as not to endanger the economic interests of the country as the ‘overwhelming economic power resided in a few major business groupings with huge bargaining

143 Amnesty International and Human Rights Watch both called upon the EPRDF and the TGE to comply with their international obligation and to bring to trial those responsible for brutal offenses during Dergue era. See Human Rights Watch ‘Evil Days,’ 374; See Amnesty International, ‘Ethiopia: End of an Era of Brutal Repression – A New Chance for Human Rights’ (Amnesty International, 18 June 1991), 46–48, accessed 20 December 2019, <https://www.amnesty.org/en/documents/afr25/005/1991/en/>.

144 SPO Report (1994), 559.

145 Decree Law 2.191 of April 1978 (Chile).

146 See SPO Report (1994), 454.

147 For a detailed discussion, see Par Engstrom and Gabriel Pereira, ‘From Amnesty to Accountability: Ebb and Flow in the Search for Justice in Argentina’, in *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*, ed. Fancesca Lessa and Leigh A. Payne (Cambridge: Cambridge University Press, 2012) 97–122.

power vis-à-vis the state'.¹⁴⁸ Dergue's adoption of socialism, the political and economic ideology implemented by the regime as a groundwork to transform the country into communism, resulted in its control of the entire state economy. In effect, both military and economic power were in the hands of Dergue. As such, as soon as Dergue officials were defeated on the military front, the regime lost every sort of control it had over the country's economy.

2.2.3 The TGE's Search for Political Legitimacy

Tronvoll, a Norwegian scholar on peace and security in the horn of Africa, noted that Dergue trials were designed to serve as rituals to disconnect the current regime from the past and 'to define a new starting point – a year zero – for democracy'.¹⁴⁹ Allo and Tesfaye argued that Dergue trials represented the beginning of a series of 'juridico-political' engagements aimed at 'legitimizing and rationalizing politics of repression and elimination' that had been ongoing in Ethiopia.¹⁵⁰ Indeed, it is possible that the decision to prosecute Dergue was reached by the EPRDF to acquire political legitimacy. At the time, there were clear indicators regarding the EPRDF's credibility deficit both internationally and internally.

Internationally, the new forces were being perceived as pro-Soviet, which, at that time, could entail a legitimacy crisis with serious repercussions for the international recognition of governments. Internally, the EPRDF was hardly considered a legitimate government, and the TGE lacked a peaceful start. The transitional period, by and large full of political unrest, was made legitimate by means of conflict with the OLF, the second major group in the TGE.¹⁵¹ Accordingly, the decision to hold Dergue officials accountable for the crimes of the old regime might have been adopted to ease the legitimacy challenges of the new government.

Although the above factors may explain why the TGE had to reach a policy decision to bring Dergue to justice, it should be noted that they do not explain why the SPO appeared as the only transitional justice institution in post-1991 Ethiopia. As discussed further below, there were no officially established institutions that could complement the works of the SPO by providing reparation to the victims or engaging in efforts aimed at healing the country through reconciliation.

148 See for instance, *Report of Truth and Reconciliation Commission of South Africa, V. IV* (1998), para. 48, accessed 20 December 2020, <http://www.justice.gov.za/trc/report/finalreport/Volume%204.pdf> (20.12.2020). See also B. Hamber and S. Kibble, *From Truth to Transformation: The Truth and Reconciliation Commission in South Africa*, Catholic Institute for International Relations, February 1999, accessed 20 December 2020, <https://www.csvr.org.za/from-truth-to-transformation-the-truth-and-reconciliation-commission-in-south-africa/>.

149 See Tronvoll, 'The Quest for Justice or the Construction of Political Legitimacy,' supra note 3, 13.
150 See Aawol Allo and Beza Tesfaye, 'Spectacles of illegality: mapping Ethiopia's show trials,' *African Identities* 13 (2015): 279–296.

151 For a full account of the political unrest during the TGE, see Theodore M. Vestal, *Ethiopia: A Post-Cold War African State* (Westport: Praeger Publishers, 1999), 1–57.

2.3 The Replacement of the Elites

Ethiopia's transition from Dergue's PDRE to the EPRDF's FDRE was a case of forced transition. Therefore, as opposed to the case of negotiated transition, the incoming powers had the discretion to lay the groundwork for the new political order unilaterally. Dergue was a vanquished force and as such had no say in the intricacies of elite exchange in post-1991 Ethiopia. Nevertheless, at the end of the London Conference, the TPLF mentioned the possibility of involving some members of the outgoing government who were not tainted with crimes of the past in the new provisional government.¹⁵²

From the outset of the transition, it was unequivocal that members and affiliates of the Dergue regime would not have a place in the new political administration. Measures taken by the EPRDF were directed towards ensuring absolute control over the entire state apparatus by the new forces. As envisioned in the Transitional Period Charter, elite exchange in the post-1991 political order was based predominantly on furthering two interests: removing Dergue and its affinities from political corridors and ensuring the sharing of political power among ethnic groups.

The EPRDF's determination to exclude members and affiliates of Dergue was signified, firstly, by its move to arrest more than 2,000 individuals in June 1991. Secondly, the July 1991 Addis Ababa Conference allowed participation of non-Dergue organizations only. It was attended by Workers' representatives, University Teachers' representatives, and 27 mostly ethnic-based liberation fronts, most of which were 'created by the EPRDF for the occasion'. The conference excluded long-standing groups such as the Ethiopian People's Revolutionary Party (EPRP), All Ethiopian Socialist Movement (AESM), and the Coalition of Democratic Ethiopian Forces (CODEF), because they had ideological differences with the EPRDF and also because they – and the AESM and CODEF in particular – were suspected of having collaborated with Dergue regime.¹⁵³ At the conference, a Transitional Period Council of Representatives of 87 members was established. The EPRDF took 32 out of the 87 seats of the Transitional Period Council of Representatives, while the OLF was given 12. The remaining 43 seats were allotted to the other 25 ethnic-based political organizations.

In a similar vein, the TGE was established in a manner that ensured that only non-Dergue members and organizations could assume political power. Following an agreement that some of the highest official positions should be shared among the ethnic-based political parties, Melese Zenawi of the TPLF became the president of the TGE. At the same time, individuals from other ethnic groups took other cabinet posts. Overall, the TGE was composed of eighteen cabinets of nine ethnic groups. The criticism at this time was not per se of the appointment of officials based on ethnic

¹⁵² See 'Ethiopian rebels pledge democratic rule,' *The Stanford Daily* (London, 29 May 1991), accessed 14 July 2022, https://archives.stanforddaily.com/1991/05/29?page=3§ion=MODSMD_ARTICLE17#article.

¹⁵³ Aaron Tesfaye, *Political Power and Ethnic Federalism*, 74.

identity but that several representatives of those ethnic-based organizations were urban intellectuals from Addis Ababa, lacking solid connections with the people they claimed to have represented.¹⁵⁴

The TGE took specific measures to ensure that persons involved in the security and intelligence apparatus of Dergue would not be part of the administrative functions of the new government. In addition to demobilizing the former army and disbanding the security forces, it detained and interned more than 10,000 of them. The TGE released about 8,000 of them after reviewing their records.¹⁵⁵ The remaining were brought to justice together with thousands of other members and officials of Dergue regime. In a significant policy decision, the TGE suspended the entire police force that was operational during Dergue. They were made to go through screening and rehabilitation to re-join the police force together with newly trained officers.¹⁵⁶

In July 1991, the EPRDF installed Grievance Hearing Committees (GHCs) in every workplace to identify and expose individuals involved in the crimes and corruption of Dergue regime. The committees had the power to investigate and dismiss individuals from work. They could also recommend detention. As for civil servants, however, the purging affected only those who were political appointees.¹⁵⁷

As to the judiciary, the TGE adopted a measure in which many judges were debarred due to prior affiliation with the ousted regime.¹⁵⁸ This affected about half of the judges in the Supreme and High courts who were members of the WPE. In a similar approach, affiliation with the WPE was included in the SPO Proclamation as a ground for excluding an individual from becoming a special prosecutor.¹⁵⁹

2.4 Reparations

Within the context of the transitional mechanism adopted in 1991, Ethiopia did not implement official schemes for reparation of victims or families and relatives of persons persecuted by Dergue. Although one of the mandates of the TGE was to provide relief and rehabilitation to mitigate the impacts of Dergue-era violence, the Transitional Period charter stated that the rehabilitation was to be provided for areas that were ‘severely affected by the war, prisoners of war, ex-prisoners of war, as

154 Kinfu Abraham, *Ethiopia From Bullets to the Ballot Box: the Bumpy Road to Democracy and the Political Economy of Transition* (Lawrenceville: the Red Sea Press Inc., 1994), 25.

155 See Human Rights Watch, ‘Ethiopia: Waiting for Justice: Shortcomings in Establishing the Rule of Law,’ 8 May 1992, 18, accessed 28 September 2020, <https://www.refworld.org/docid/45cc5f472.html>.

156 Human Rights Watch, ‘Ethiopia: Waiting for Justice,’ 18.

157 Human Rights Watch, ‘Ethiopia: Waiting for Justice,’ 18.

158 Human Rights Watch, ‘Ethiopia: Waiting for Justice,’ 18.

159 For instance, Article 5 (3) of the SPO Proclamation states that a member of the SPO must be an Ethiopian citizen who was not a member of the Workers Party of Ethiopia (Dergue) and its security forces.

well as those sections of the population that have been forcibly uprooted by the previous regime's policy of villagization and resettlement'.¹⁶⁰ Accordingly, the charter did not envisage any form of reparation for the victims of political violence during the Red Terror and other Dergue campaigns.

The SPO Proclamation acknowledged that Dergue had impoverished the country's economy by plundering, illegally confiscating and destroying the property of the people as well as by misappropriating public and state property. Nonetheless, there was no mechanism put in place by the charter or any other laws to compensate the victims for the economic and moral damages they sustained. The absence of a reparation scheme might have put Ethiopia in stark contrast with the experiences of several Latin American countries where moral and material reparation was adopted to acknowledge the suffering of the victims and wrongdoing on the part of the state.

Perhaps one reason for the absence of a reparation scheme was the partisan nature of the transition in Ethiopia, where the TGE was established and ruled by a few forces engaged in armed resistance against Dergue. As a result, several non-military groups persecuted by Dergue, such as the EPRP and AESM, were not recognized or allowed by the EPRDF to attend the Addis Ababa Conference in July 1991, as noted above. Even after ascending to political power, the EPRDF acted as a party representing a specific section of the country instead of a government for the entire Ethiopian population. Yet the reality was that the State of Ethiopia failed to protect all of its citizens from gross human rights violations, which the TGE was unwilling to acknowledge fully.

The selectivity in the transitional process implied the existence of disagreement among the victims of violence in recognizing each other. The absence of a national reconciliation process, as discussed further below, that could have involved all parties and victim groups could also be a reason why the charter did not consider reparation for all kinds of victims. No meaningful development involving reparation has occurred in the post-transitional period. The 1995 constitution, which was adopted on the promise of 'rectifying historically unjust relationships', failed to guarantee the provision of reparation for victims of persecution.¹⁶¹

The absence of a relevant reparation provision in the proclamation poised the SPO to bring Dergue to justice. Victims of gross human rights violations were not significantly involved in Dergue trials except for where they served as SPO witnesses. Neither the state nor the convicted Dergue officials were required by Ethiopian courts to pay even symbolic restitution to the victims of the regime's violence.

160 Transitional Period Charter, Article 14.

161 FDRE Constitution, Preamble, para. 4.

2.5 Reconciliation

At the London Conference of May 1991, Dergue attempted to discuss issues of reconciliation and amnesty with the rebel groups (OLF and TPLF). The TPLF lacked a clear policy direction concerning whether to prosecute or grant amnesty for past crimes, as was further displayed in interviews its leaders gave to journalists in London. In one interview, the TPLF hinted that Dergue officials ‘might be brought to justice’.¹⁶² In another, it was stated that the TPLF had not ruled out a blanket amnesty in case the general public wanted one to be granted.¹⁶³

It was, therefore, with an undecided aim that the EPRDF detained Dergue officials in June 1991. The question of reconciliation was not raised and discussed at the Addis Ababa Conference of July 1991. However, the 1991 Transitional Period Charter included a provision implying, arguably, the need to adopt a reconciliation process. In its preamble, the charter highlighted the following:

peace and stability as essential conditions of development require the end of all hostilities, the *healing of wounds caused by conflicts* and the establishment and maintenance of good neighborliness and co-operation.¹⁶⁴

As there is no settled theoretical or practical approach in this regard, the charter’s call on the TGE to heal Ethiopia’s wounds was open to interpretation. The question is whether the nation’s wounds would heal through efforts to depolarize political conflicts or prosecute alleged perpetrators. Some scholars advocate the view that prosecution, and only prosecution, can bring true healing to the wounds of a nation.¹⁶⁵ The experiences of countries that have dealt with atrocities of a similar nature indicate a firm belief that a nation’s wounds may heal through adopting a transitional justice approach that also introduces amnesty, or a process that combines both amnesty and prosecution.

Nonetheless, the TGE took a path in which it chose prosecution over reconciliation – it established the SPO, but not a TRC. Its decision was fundamentally different from the choices made earlier by Argentina¹⁶⁶ and Chile¹⁶⁷ and later by Sierra Leone

162 See G. A. Lewthwaite, ‘Rebels pledge democracy in Ethiopia: U.S.-brokered talks end in agreement after fall of capital,’ *The Baltimore Sun*, 29 May 1991, accessed 27 September 2020, http://Articles.baltimoresun.com/1991-05-29/news/1991149072_1_addis-ababa-ethiopians-eprdf.

163 See B. Harden, ‘Rebel leaders Pledges Coalition Government, then Free Elections,’ *The Washington Post*, 29 May 1991, accessed 20 October 2020, <https://www.washingtonpost.com/archive/politics/1991/05/29/rebel-leader-pledges-coalition-government-then-free-elections/a5818143-9397-470d-a1b2-b44e28e9e98d/>.

164 FDRE Constitution, Preamble, para. 3. [Emphasis added].

165 See Jon Van Dyke, ‘The Fundamental Human Right to Prosecution and Compensation,’ *Denver Journal of International Law and Policy* 29 (2000 – 2001): 77–100.

166 For a detailed discussion on the choices made in Argentina regarding the crimes committed between 1976 and 1982, see Per Engstrom and Gabriel Pereira, ‘From Amnesty to Accountability: Ebb

and South Africa, which included a provision on amnesty and on the establishment of TRCs to establish the whole truth and heal the wounds. The TGE did not explain why prosecution – and only prosecution – was considered an ‘essential’ course of action in restoring peace and stability in Ethiopia.

It is important to note that the TGE’s decision to reject reconciliation altogether was reached against recommendations by international organizations such as Human Rights Watch that Ethiopia should focus on prosecuting only those most responsible.¹⁶⁸ Rejecting non-judicial approaches and focusing only on bringing thousands of people to justice was also a miscalculated path in terms of resources. The country had an almost unsustainable judicial infrastructure, which could not adequately address day-to-day disputes during the transitional period. Many experienced judges had fled the country during the Mengistu regime due to fear of persecution.¹⁶⁹

Most importantly, there was no public participation and support behind the TGE’s decision to choose prosecution over reconciliation; it was the EPRDF that formulated the choice without properly seeking the public’s or victims’ opinion on the matter.¹⁷⁰ As opposed to the TGE’s initial statement that it would consider provision for amnesty if the Ethiopian public wanted that, there was no direct or indirect communication of such an opinion from the public addressed to the TGE (either in the form of a referendum or of a political debate).¹⁷¹ If there was victim participation at all, Ethiopia’s transitional period politics was limited to the scattered gatherings of mourners, which aimed more at finding the whereabouts of the dead or disap-

and Flow in the Search for Justice in Argentina” in Francesca Lessa and Leigh A. Payne *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*, ed. (Cambridge: Cambridge University Press, 2012), 97–122.

167 See Supreme Decree No.355 (Chile): Creation of the Commission on Truth and Reconciliation (Santiago, 25 April 1990), accessed 28 September 2020, <http://www.usip.org/sites/default/files/file/resources/collections/commissions/Chile90-Charter.pdf>. According to the first paragraph of the Decree’s preamble, the TRC was established considering ‘that the moral conscience of the nation demands that the truth about grave violations of human rights committed in [Chile] between September 11, 1973 and March 11, 1990 be brought to trial’.

168 See Human Rights Watch, ‘Evil Days: 30 Years of War and Famine in Ethiopia’ (Report of African Watch, September 1991), 376, accessed 20 September 2020, <https://www.hrw.org/sites/default/files/reports/Ethiopia919.pdf>.

169 See Human Rights Watch, ‘Ethiopia: Reckoning under the Law’ (Human Rights Watch, 1 December), 19, accessed 28 September 2019, <https://www.hrw.org/report/1994/12/01/ethiopia-reckoning-under-law> [Hereinafter: Human Rights Watch, ‘Ethiopia: Reckoning under the Law’].

170 See Demelash Shiferaw Reta, *National Prosecution and Transitional Justice: The Case of Ethiopia* (PhD Dissertation, University of Warwick School of Law, 2014), 186–7. It is, however, stated that there were demands by some of the victims and their families who organized anti-Red Terror campaigns to ask the government to bring the perpetrators to justice. See also, Dadimons Haile, *Accountability for Crimes of the Past and the Challenges of Criminal Prosecution: The Case of Ethiopia* (Leuven: Leuven University Press, 2000), 59–60.

171 Haile, *Accountability for Crimes of the Past and the Challenges of Criminal Prosecution*, 59–60.

peared victims.¹⁷² Therefore, no relevant discussions were held between victims and perpetrators, between victims and victors, or still between victors and vanquished.

On the contrary, members of Dergue expressed willingness to apologize, although this was mostly done after charges were already brought against them. It was reported that some of the Dergue officials interned by the TGE requested the government of Ethiopia adopt an approach of national reconciliation that would have offered amnesty instead of prosecution.¹⁷³ According to the request, Dergue officials stated that

there is and will be nothing one can do to bring back the dead to life; there should be a national reconciliation. A magnanimous decision by the government is a better choice so that wounds heal and resentments fade away.¹⁷⁴

As the government did not attend to their request, Dergue officials raised the same argument in court in the form of a preliminary objection to their indictment.¹⁷⁵ Back then, the Federal High Court rejected the claim, stating that it was not in the court's mandate to allow for amnesty or reconciliation and that the defendants' offer to apologize to the public could not discontinue an ongoing trial.¹⁷⁶

Ironically, the perpetrators' request to apologize resurfaced before the Ethiopian courts even after they were convicted. In their joint response to a sentencing opinion, the convicts in *Mengistu et al.* requested the Federal High Court take into account the fact that they had asked the government to create a forum for them so that they could officially apologize to the Ethiopian public for the crimes committed during their time in power.¹⁷⁷ At the sentencing phase, the SPO reiterated its earlier stance on the matter and stated that the defendants were never truly remorseful.¹⁷⁸ The Federal High Court, however, accepted the defendants' readiness to apologize as a mitigating factor, although it was sceptical as to their sincerity.¹⁷⁹ It still found that the request

172 See Bridget Conley, *Memory from the Margins: Ethiopia's Red Terror Martyrs Memorial Museum* (London: Palgrave Macmillan, 2019), 85.

173 Conley, *Memory from the Margins*, 167.

174 See Conley, *Memory from the Margins*. Translation by the Author. The original (Amharic) version reads:

ምንምበናደርግየሞቱትንመልሰንስለማናገኛቸውብሔራዊእርቅመደረግአለበት።ደምእንዲደርቅቷምእንዲፋቅልበሰራነትያካተተየመንግስትወሳኝነትሻለአማራጭነው

The context and exact time of this request were not mentioned in the records of the SPO. It is possible that this was done after the decision to prosecute was already announced, as there appears no evidence of similar communication while the defendants were in detention.

175 FHC, *SPO vs. Colonel Mengistu Hailemariam et al.* (Ruling on Preliminary Objections), 10 October 1995, File No. 1/87, 94.

176 FHC, *SPO vs. Colonel Mengistu Hailemariam*, 94.

177 FHC, *SPO vs. Colonel Mengistu Hailemariam et al.* (Sentencing Judgment), 10.

178 FHC, *SPO vs. Colonel Mengistu Hailemariam*, 4.

179 FHC, *SPO vs. Colonel Mengistu Hailemariam*, 14.

for an ‘apology forum’ could be seen ‘as a good thing for the future; meaning, as a request aimed at bringing reconciliation’.¹⁸⁰

It was only three decades after Dergue’s downfall that Ethiopia started to consider the importance of national reconciliation in addressing complex political problems that had kept the country under repression and violence. In that respect, a reconciliation commission was established in 2019 to ‘maintain peace, justice, national unity and consensus as well as reconciliation among Ethiopian Peoples’.¹⁸¹ The establishment of the commission is symptomatic of the fact that Ethiopians have been denied an opportunity to discuss and resolve their national problems amicably.

2.6 Laws Relating to Transitional Justice

Two significant laws could be seen as foundational to creating and administering transitional justice institutions/systems in post-Dergue Ethiopia: the 1991 Transitional Period Charter and the 1994 FDRE Constitution. The Transitional Period Charter is significant because it established a new beginning in Ethiopia’s legal and political landscape through the establishment of the TGE. In particular, it incorporated the Universal Declaration of Human Rights and avowed respect for and the promotion of individual human rights in Ethiopia. In responding to the most critical questions that had served as a basis for the struggle against Dergue, the charter affirmed the rights of the nation’s peoples to self-determination. Besides laying down the fundamentals of a new chapter in Ethiopian political order and espousing the establishment of an electoral and constitutional commission, the charter repealed all laws of Dergue that would contradict its contents and promises.

The following legislations were among the important laws enacted to enforce the Transitional Period Charter by allowing rights and activities banned during the Dergue regime. These are:

- **Ethiopian Privatization Agency Establishment Proclamation** (No. 87 of 1994)¹⁸² as amended by the Ethiopian Privatization Agency Establishment (Amendment) Proclamation (No. 52 of 1996). Established a privatization agency with authority to select, evaluate and prepare public enterprises for privatization, a move that repealed Dergue’s proclamation on nationalization or public ownership of the means of production.

180 FHC, *SPO vs. Colonel Mengistu Hailemariam*, 15.

181 Reconciliation Commission Establishment Proclamation, Proclamation No. 1102/2018, entered into force 5 February 2019.

182 Ethiopian Privatization Agency Establishment Proclamation, Proclamation No. 87/1994, entered into force 17 February 1994 accessed 20 March 2021, <https://chilot.me/wp-content/uploads/2011/01/proc-no-52-1996-ethiopian-privatization-agency-establishme.pdf>.

- **Political Parties Registration Proclamation** (No. 46/1993)¹⁸³ as amended by Political Parties Registration Amendment Proclamation (No. 82 of 1994).¹⁸⁴ Effectively ended Dergue’s one-party system. Its significance is unparalleled, as it was the absence of a law providing for a multi-party system that intensified the political violence during the Dergue regime.
- **Electoral Law of Ethiopia Proclamation** (No. 64 of 1993)¹⁸⁵ as repealed by the Proclamation to make the Electoral Law of Ethiopia conform with the FDE Constitution.
- **Constitutional Commission Establishment Proclamation** (No. 24 of 1992).¹⁸⁶ This law not only solidified the suspension of the PDRE Constitution of 1987, but also guaranteed that a negotiated constitution would become a reality in Ethiopia.

By the end of 1994, elected representatives of the Nations, Nationalities and Peoples of Ethiopia ratified the FDRE Constitution.¹⁸⁷ The constitution is, to date, the most significant legal and political development in Ethiopia after Dergue. On the top of providing a constitutional basis for the establishment of various institutions discussed elsewhere in this study, the constitution contained two features that marked a complete departure from the legal and political aspects of the Dergue regime. These are:

- **Human and Democratic Rights:** The constitution devoted its entire chapter 3 to incorporating fundamental human rights on an unprecedented level. Besides, it provided under Articles 9 and 13 that international human rights treaties ratified by Ethiopia were above and beyond the constitution itself. In terms of ratification, which could also be considered an important development in post-1991 Ethiopia, it was in 1993 that Ethiopia acceded to the human rights covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The following year, it ratified

183 Political Parties Registration Proclamation, Proclamation No. 46/1993, entered into force 15 April 1993, accessed 20 March 2021, https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=52400.

184 Political Parties Registration Amendment Proclamation, Proclamation No. 82/1994, entered into force 28 January 1994, accessed 20 March 2021, https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=fr&p_isn=71633&p_country=ETH&p_count=171.

185 Electoral Law of Ethiopia Proclamation, Proclamation No. 64/1993, entered into force 23 August 1993, accessed 20 March 2021, https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=35190&p_country=ETH&p_classification=01.

186 Constitutional Commission Establishment Proclamation, Proclamation No. 24/1992, entered into force 18 August 1992, accessed 20 March 2021, https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=34098.

187 For details, see the Constitutional History of Ethiopia, accessed 20 March 2021, <https://constitutionnet.org/country/ethiopia>.

the Convention Against Torture and Other Cruel or Inhuman or Degrading Treatment or Punishment.

- **Obligation to Prosecute:** as noted in section 3.2. above, the constitution included a provision (Article 28) that gross human rights violations would not be subjected to amnesty or pardon by the government. This development was a pledge to abolish impunity as a guarantee of non-repetition of crimes like those perpetrated by Dergue.

2.7 Access to Files

As noted above, Dergue carried out its violence by employing a well-structured system of repression, in which orders to persecute members and affiliates of opposition political groups had to pass through a well-established and strict chain of command. This involved highest-ranking officials as well as local actors at the *Kebele* level. The usual procedure was well-oiled, followed clearly determined steps and was often accompanied by minutes of meetings of members of the revolutionary campaign coordinating committees. The process is deemed to have been meticulously recorded and kept – perpetrators took audio-visual records of torture sessions before they murdered their victims. Prison authorities meticulously maintained records of incarceration and executions, perhaps as proof of adherence to superior orders and campaigns to eliminate anti-revolutionaries.

Dergue's departure was so abrupt that the regime did not have the time to destroy the evidence of its well-documented violence. The incoming powers were left with unfettered access to the entire archives of Dergue. Perhaps this was one of the reasons why the TGE decided to prosecute Dergue. In a 1994 report entitled 'The Special Prosecution Process of War Criminals and Human Rights Violators in Ethiopia', the SPO announced that it 'has ten times more evidence than needed to prosecute several of the detained successfully and many of the exiles for serious criminal offences'.¹⁸⁸ As Engelschiøn, a Norwegian expert who assisted the SPO in the 1990s, wrote, it is doubtful if there were 'any other cases relevant to war crimes and violations of International Humanitarian Customary Law where you have such an amount of written materials as evidence'.¹⁸⁹ An exception to this is that the SPO lacked reliable and sufficient evidence for its war crimes cases due to Eritrea's secession and the irretrievability of military communiqués from Dergue's military base in Asmara, the capital city of Eritrea.¹⁹⁰

188 SPO, 'Report of the Office of the Special Prosecutor 1994: The Special Prosecution Process of War Criminals and Human Rights Violators in Ethiopia' in *Transitional Justice: How emerging democracies reckon with former regimes; Laws, Rulings and Reports*, ed. Neil J. Kritz (Washington DC: United States Institute of Peace Press, 1995), 559–574.

189 SPO, 'Report of the Office of the Special Prosecutor 1994,' 26.

190 SPO, 'Report of the Office of the Special Prosecutor 1994,' 432.

However, accessing files could be a strenuous exercise for researchers, academicians, and journalists. After the SPO completed its prosecution in 2010, its records were transferred to an unknown location on the grounds of national security – and became inaccessible to the public. In Addis Ababa, although the library of the House of Peoples’ Representatives maintains a collection of the old laws and documents not destroyed during the military transition in May 1991, the library grants only minimal permissions to photocopy or scan its collections. No specific library provides complete access to the files of Dergue.

Similarly, documents relating to the trials of Dergue are not easily accessible. The cases are not readily available because Ethiopia lacks official gazettes that publicize court judgments,¹⁹¹ as already noted by commentators who have attempted to include a more elaborated discussion on Ethiopian trials.¹⁹² Where access is granted through official channels and institutional support, locating some of the documents in court archives requires even more time, as files were often misplaced or moved from their alleged original locations, and no one would be there to assist. In addition, a language barrier, in particular with respect to international commentators, may have isolated the historical, political, and legal aspects of the transitional justice in Ethiopia from being exposed to a comprehensive critique.¹⁹³

Concerning records and archives, it should be pointed out here that Ethiopia has a National Archives and Library Agency established as an autonomous organ under Proclamation No. 179/1999.¹⁹⁴ The National Archives and Library are located in Addis Ababa and are open to researchers and historians. The objective of the establishment of the National Archives and the Library Agency is to collect, systematically organize, preserve, and make the information resources of the country available for study and research purposes. One of the mandates of the National Archives was to acquire and preserve records of defunct government offices or institutions as well as archives without owners.¹⁹⁵ Nonetheless, whether the SPO has transferred the thousands of pieces of documentary evidence it has collected to support its case against Dergue officials is not clear.

191 It was only in 2005 that a law was enacted to impose on the Federal Supreme Court an obligation to publish binding decisions of its cassation bench. See Federal Courts Proclamation Re-Amendment Proclamation, Proclamation No. 454/2005, Article 2 (1), para. 2.

192 See Cherif Bassiouni, *International Criminal Law: International Enforcement* ³(Leiden: Martinus Nijhoff Publishers, 2008), 311.

193 Firew Tiba, ‘Mass Trials and Modes of Criminal Responsibility for International Crimes: The Case of Ethiopia’ in *The hidden histories of war crimes trials*, ed. Kevin John Heller and Gerry Simpson (Oxford: Oxford University Press, 2013), 310 – 311.

194 Ethiopian National Archives and Library Proclamation, Proclamation No. 179/199, entered into force 29 June 1999.

195 Ethiopian National Archives and Library Proclamation, Proclamation No. 179/199, Article 8 (4).

2.8 Memorial Sites

Memorial sites commemorating the violence of Dergue regime took two categories – i) memorial sites for victims and ii) armed struggle memorials. A closer look at the nature of installed commemorative symbols indicates that the country paid far better attention to commemorating the armed struggle than the victims. Memorial sites for victims of Dergue are relatively very few and have resulted from efforts made by families of victims.

2.8.1 Memorial Sites for Victims

(i) The Holy Trinity Memorial for Early Martyrs

Immediately after the downfall of Dergue, families of victims had engaged in various efforts to locate and exhume the bodies of their loved ones for reburial. Most of the notable exhumations were conducted before the TGE made any significant policy decision regarding the victims or crimes of Dergue. In Addis Ababa, victims' families exhumed the bodies of the 59 officials buried in mass graves at Karchale prison. The families also exhumed other officials and dignitaries whom Dergue executed in July 1978. Bodies of 68 martyrs were reburied at the Holy Trinity Cathedral in Addis Ababa, where a memorial cemetery was built by the victims' families on 26 July 1992. The monument contains profiles of the victims and is open to visitors. Occasionally, families of the victims gather to commemorate the martyrs. The most recent commemoration visit took place on 24 November 2020, on the 46th anniversary of the 1974 summary execution.

(ii) The Memorial Stone

The first effort to honour victims of the violence during (mainly) Dergue's Red Terror campaign was announced on the third anniversary of the TGE on 28 May 1994, when a memorial stone was laid at Meskel Square in Addis Ababa. In highlighting its importance, the late Melese Zenawi, president of the TGE, stated that 'we lay this memorial stone in memory of those who were massacred while fighting for democracy and justice.'¹⁹⁶ The memorial stone was evidently not meant to serve as a permanent monument but as a foundation for a future memorial site. It was just a small rectangular stone placed in front of the Addis Ababa Museum.

Nonetheless, nothing has been added to the memorial stone to make it a visible reminder of the past. It has become a stone forgotten in the dust by the side of the street. By contrast, monuments previously erected in Addis Ababa have maintained a conspicuous appearance, with ample open space designated to each. Examples include the 28-metre high *Yekatit 12* Monument commemorating a massacre committed

¹⁹⁶ Conley, *Memory from the Margins*, 85.

by Italian forces and a 50-meter-high obelisk memorial to Dergue's 1977 war to quell Somalia's invasion.

(iii) The Red Terror Martyrs' Memorial Museum (RTMMM)

The second and most significant memorial site in Addis Ababa is the Red Terror Martyrs' Memorial Museum (RTMMM), built next to the memorial stone in 2010. The RTMMM resulted from a non-governmental initiative by the Association of Red Terror Survivors, Families, and Friends, a civic society established on 15 September 2003. Its construction was funded by private donations collected through fundraising events organized by members of the association. Half of the contribution, 7,000,000 Ethiopian Birr, came from Sheik Mohammed Hussein Al Amoudi, the wealthiest resident in Ethiopia.¹⁹⁷

The RTMMM serves as a memorial to the victims who died and were tortured during the Red Terror. Despite its relatively small size, torture instruments, skulls and bones, coffins, bloody clothes and photographs of victims are displayed in the museum. One of the shortcomings of the museum is that it was not established with a clear definition of who would count as a victim. The vast majority of those considered victims by the RTMM are members of the EPRP, a phenomenon that might raise concerns of representation regarding other victim groups.

(iv) African Union Human Rights Memorial (AUHRM): Alem Bekagn

In 2008, Chinese-funded headquarters expansion was begun for the African Union (AU) on a site that used to host Alem Bekagn, the most notorious wing of the central prison, Kerchele, built by Haile Selassie in the early 1920s. Alem Bekagn (literally, 'farewell to the world') was used by Dergue as an incarceration centre for members of opposition political groups and as a torture chamber. It was also where the 59 officials of the Haile Selassie regime were summarily executed on 24 November 1974. The AU Commission was criticized for expanding its headquarters into a place where many had been killed and tortured.

Prompted by such criticism, and also with a view to establishing a broader memorial for atrocities committed in various places in Africa, the AU Commission started implementing a plan already included in its resolution of 7 April 2004. The resolution promised on the occasion of the tenth anniversary of the genocide in Rwanda to establish a human rights memorial for the victims of the Rwandan genocide and the Red Terror in Ethiopia.¹⁹⁸ AU's Human Rights Memorial Project (AUHRM) is meant to manifest the duty to remember, provide recognition for the victims, and

¹⁹⁷ Conley, *Memory from the Margins*, 142.

¹⁹⁸ For details see Alex de Waal, 'AlemBekagn: the African Union's accidental human rights memorial,' *African Affairs* 112/447 (2013): 191–215.

constitute a place of mourning and public education. In addition to the Red Terror memorial, it comprises memorials on the Rwandan genocide, apartheid and slavery. Nonetheless, the AU Commission's Red Terror memorial is, in reality, limited to publishing brief notes and stories of survivors of the Red Terror on its web page.¹⁹⁹ Only a small monument is placed inside the AU Commission to remember Alem Bekagn.

2.8.2 Armed Struggle Memorials: Victims or Victors?

Two somehow interrelated forms of violence could characterize the persecution during Dergue era. The first took the form of violence perpetrated by both civilian and military officials against the civilian population in the absence of armed conflict. This included the Red Terror and other campaigns of violence that Dergue undertook to eliminate members of opposition political groups in cities and towns across the country. The second form of violence was the one that had a direct nexus to the several protracted armed conflicts between Dergue and the rebel forces. The most formidable rebel group was the EPRDF, which overthrew Dergue in collaboration with the OLF and EPLF. The EPRDF, which has ruled Ethiopia for the past three decades after the downfall of Dergue, was a coalition of three organizations: the TPLF, the Amhara National Democratic Movement (ANDM) and the Oromo People's Democratic Organizations (OPDO). To commemorate their armed struggle and victory against Dergue, the three groups have created armed struggle memorials in the respective regions they represented.

(i) Tigray Martyrs' Memorial Museum and Monument

The Tigray Martyrs' Memorial Museum and Monument (TMMMM), built to commemorate the TPLF's struggle against Dergue, was the first to open in 1995. TMMMM, which loomed large at the centre of Mekelle, the Capital of the Tigray region, was claimed to have been funded through private donations. Each TPLF soldier has donated four months' salary to make the memorial a reality. In addition to the museum and a towering monument, a memorial flame was placed on the ground at the centre of the monument to commemorate the 22 June 1988 massacre of Hawzien.

(ii) Amhara Region People's Martyrs' Memorial Monument and Museum

A decade after the TMMMM was built and opened to the public, the Amhara Regional Government decided in 2006 to finance a similar memorial site in honour of the ANDM soldiers and the peoples of the Amhara Region who fought against the brutal Dergue regime. The Amhara Region People's Martyrs' Memorial Monument and Museum was opened in 2009 in Bahir Dar, the capital of the Amhara regional state. The

¹⁹⁹ Accessed 20 March 2021, <http://alembekagn.org/au-memorials/106-the-Red-Terror-memorial>.

memorial site was built on the banks of the river Nile and hosted an amphitheatre, museum, library, art gallery, monument, meeting halls, and cafeteria.

A statue at the memorial site was demolished in December 2020 by the decision of the Amhara regional government in Bahirdar.²⁰⁰ The statue of a warrior on horse with head bowed was regarded as a TPLF-installed memorial that does not reflect the history and psychology of the Amhara people.

(iii) Oromo Martyrs' Memorial Museum and Monument: Unfinished

In 2004, the Oromia regional state opened a memorial site in Adama, a city near the regional capital Finfinne (Addis Ababa). The site has a similar plan to the memorial sites in Bahir Dar and Mekelle. The Adama memorial, intended to honour all Oromo who participated in the struggle against Dergue, was funded by the OPDO. Except for the monument, which was designed to depict the people's struggle for freedom and to preserve their culture for the future, most of the memorial site is not ready for use. A planned museum has not been finished. Some of the rooms have been left for use as a dormitory by regional security forces.²⁰¹ Given that the OPDO is considered a latecomer to the struggle against Dergue and that its participation in the EPRDF coalition led to the exclusion of the OLF (by far the oldest organization in the struggle of the Oromo) from the political space during the transitional period, it is doubtful whether the Oromo people have seen the Adama memorial site as something that represents their struggle against Dergue.

2.9 Commemorative Events

No officially recognized regular commemoration days or events are established in Ethiopia for remembering the victims of the Dergue regime. There are no dates designated for commemorating the beginning or the end of the Red Terror campaign, the Huwzien massacre of 22 June 1988, the May Day massacre of 1977, or the summary executions of 4 November 1974. Overall, public holidays in Ethiopia do not emphasize the campaigns of persecution and the victims of Dergue.

Even the Ethiopian Orthodox Church (EOC) has not designated a commemorative day to remember the misery and death of its patriarch Abune Tewoflos at the hands of Dergue. This silence of the Church is paradoxical given its previous tradition of commemorating massacred patriarchs. For instance, the EOC has imputed sainthood to Abune Petros, a patriarch murdered by the Italian army in Addis Ababa on 29 July 1936, and built a church in his name.

²⁰⁰ Accessed 20 March 2021, <https://www.ethio-telecom.net/watch.php?vid=be8b392e1>.

²⁰¹ Conley, *Memory from the Margins*, 85.

Nonetheless, two major commemorative dates have links to the transition from Dergue to the FDRE. The first is the *Downfall of Dergue*, which is celebrated on 28 May every year. Government officials make speeches and hold other events to highlight the EPRDF's victory over Dergue forces. Ironically, the 28 May commemoration emphasizes the lengthy and bloody civil war in a manner that appears to afford less significance to the victims of the Red Terror and other campaigns of violence with no direct nexus to the armed conflict between Dergue and the rebel forces.

The second memorial day is *Nations, Nationalities and People's Day*, which has been celebrated every year on 8 December, the date on which the FDRE Constitution of 1994 came into force, guaranteeing the rights and equality of Ethiopia's nationalities and peoples. On this day every year, a different regional state or autonomous-city administration hosts a festival in which ethnic groups share their culture through live performances to display the diversity and unity of Ethiopia's peoples and groups. This celebration is believed to reflect the FDRE's marked departure from the political activities carried out during the Dergue regime, where the diversity of ethnic groups and the self-administration of regions were not recognized.

2.10 Transitional Justice Institutions

As noted above, Ethiopia's transition from the Dergue regime was spearheaded by the TGE, which was in turn controlled by the TPLF-EPRDF. The TPLF was preoccupied with consolidating its grip on power. It was clear from the circumstances of the time that it did not make establishing transitional institutions its priority. For instance, no international or national commission of inquiry, be it ad hoc or permanent, was established by the TGE to examine the abuses of the Dergue regime. The need to establish a commission of inquiry was brought to the attention of the TGE in September 1991 by African Watch and Amnesty International, an alert which the TGE ignored.²⁰²

As also discussed above, under sections 3.4. and 3.5, the TGE was unwilling to establish a reparation or reconciliation commission. The most significant transitional justice institution established by the TGE was the SPO. Established with a primary responsibility of prosecuting Dergue for crimes committed from 1974 to 1991, the SPO had, in reality, to act as both police and prosecution department in carrying out investigations into and prosecutions of Dergue-era crimes.

In addition, the SPO had the secondary responsibility of establishing the historical truth regarding the atrocities committed during the Dergue regime. According to paragraph 5 of the preamble of the SPO Proclamation, the SPO was responsible for 'recording for posterity the brutal offenses and the embezzlement of property pepe-

²⁰² See *Thirty Years of Evil Days*, supra note 15, 377–379; Amnesty International, 'Ethiopia: End of an Era of Brutal Repression,' 47.

trated against the people of Ethiopia'.²⁰³ This secondary mandate was, as the proclamation added, demanded by the 'interest of just historical obligation'.²⁰⁴

In the absence of any guidance in the proclamation, the SPO seems to have understood its second mandate as limited to documenting and reporting a 'judicial truth,' i.e. a truth uncovered through judicial proceedings. Given that promising non-prosecution in the form of an amnesty was off the table, the TGE must have aimed to reach the truth through judicial proceedings. Nevertheless, the SPO later on dropped the truth-reporting task itself, as it focused on prosecution alone.²⁰⁵ *Dem Yazele Dossie* (literally, 'blood-soaked dossier') is the only report that the SPO published for public access just before its closure in 2010.²⁰⁶ Even then, the report offered a highly selective presentation of crimes committed only by the highest-ranking Dergue officials.

In addition to the SPO, Ethiopian courts have played a vital role in the effort to bring perpetrators to justice. The TGE did not establish a specialized tribunal. The trials had to be conducted using regular courts. Initially, it was the Federal High Court (FHC) that was given the jurisdictional mandate to see Dergue-era cases. Later on, and as the prosecution expanded to cover crimes all over the country, the FHC had to delegate its mandate to regional supreme courts. As a result, five regional supreme courts were involved in Dergue trials. These were:

1. the Supreme Court of the Amhara Regional State (in Bahirdar and Dessie),
2. the Supreme Court of Harari Regional State (in Harar),
3. the Supreme Court of Oromia Regional State (in Assela and Jimma),
4. the Supreme Court of the Regional State of Southern Nations, Nationalities and People (in Hawassa), and
5. the Supreme Court of Tigray Regional State (in Mekelle).

The Federal Supreme Court served as a court of appeal for cases seen by the five regional supreme courts and the FHC. Several decisions were also rendered by the Cassation Bench of the Supreme Court on questions of interpretation of the laws applied in Dergue cases.

203 See Proclamation Establishing the Office of the Special Prosecutor: Proclamation No. 22/1991, entered into force 8 August 1992, Preamble, para. 5, accessed 20 March 2021, <https://www.usip.org/sites/default/files/Ethiopia-Charter.pdf>.

204 See Proclamation Establishing the Office of the Special Prosecutor: Proclamation No. 22/1991.

205 Priscilla Hayner, 'Past Truths, Present Dangers: The Role of Official Truth Seeking in Conflict Resolution and Prevention,' in *International Conflict Resolution after the Cold War*, ed. Paul Stern and Daniel Druckman (Washington DC.: National Academy Press, 2000), 338–382, 349.

206 See *Dem Yazele Dossie*.

2.11 Victims' Associations

The downfall of Dergue saw several informal gatherings of families of victims. In the early 1990s, victims' families held informal discussions in what was then referred to as Red Terror victims' committees. The committees did not form formal associations and focused primarily on locating the disappeared and exhuming the bodies of their loved ones. They were mostly gatherings of mourners and they did not attempt to advocate on behalf of the victims in terms of justice or truth and memory. As noted above, however, some families of victims managed to establish a permanent memorial site. Notably, the above-mentioned Holy Trinity Memorial for 68 victims executed by Dergue between 1974 and 1978 resulted from efforts made by families of the victims.

On 15 September 2003, a more formal victims' association was officially established in Ethiopia: the Association of Red Terror Survivors, Families, and Friends, registered as a civil society organization in Ethiopia. Its members include victims of those who survived the violence, families of victims (parents, siblings, and children of those who suffered and died) and friends (those who support the association's goals and programs). The association has managed to take visible steps to honour the victims of Dergue and support post-Dergue efforts in building democratic governance in the country.

As for memory and remembrance, the RTMMM is a result of the association's efforts. The association has not just planned and funded the RTMMM but has also been in charge of running and maintaining it. The association has also attempted to collaborate with individuals to establish access to documents from Dergue regime, although this has not been successful.

To develop a political culture that entertains a diversity of ideas, as opposed to what was the case during Dergue regime, the Association of Red Terror Survivors, Families, and Friends was involved in pre-election activities. It managed to host a discussion between the ruling party, the EPRDF, and opposition groups in 2005. The association tried to influence political parties into making official pledges to accept election results and avoid resorting to violence. Unfortunately, the effort was not successful, as the aftermath of the 2005 election exhibited bloody violence perpetrated by government forces and supporters of opposition groups.

2.12 Measures in the Educational System

Influenced by education advisors from sister states such as the Soviet Union and East Germany, education under Dergue was highly politicized and used for ideological indoctrination, instilling socialist ideals in all students. Undeniably though, the Dergue regime managed to decrease the national illiteracy rate despite its policy of persecution and the protracted nature of the armed conflict. The downfall of Dergue has brought about notable changes in Ethiopia's education system.

In 1994, the TGE enacted Ethiopia's first post-Dergue education sector reform, the Education and Training Policy (ETP). The policy reflected the shortcomings of the education system during Dergue and comprised specific objectives that were believed to direct the country towards achieving the goals of the 1991 revolution. As noted in the ETP, the education reform was required to chart the right direction to overcome 'the complex problems into which the country has been plunged by the previous dictatorial, self-centred and vain regimes'.²⁰⁷ Accordingly, the ETP emphasized that the specific objectives of education in the new Ethiopia are, among others,

- to provide education that promotes democratic culture, tolerance and peaceful resolutions of differences and that raises the sense of discharging societal responsibility.
- to provide education that can produce citizens who stand for democratic unity, liberty, equality, dignity and justice and who are endowed with moral values.
- to recognize the rights of nations/nationalities to learn in their own language.

In terms of expanding school projects, the first thing Ethiopia did was repeal Dergue's proclamation prohibiting private schools. In all the regions, a system has been put in place whereby private investors are offered land for free or at a nominal price to build schools. In major towns and cities, private investors have opened several kindergartens, primary, secondary, technical and vocational schools, as well as institutions of higher education.²⁰⁸

One of the major curriculum developments in post-Dergue Ethiopia is the introduction of Civic and Ethical Education courses at all schools (primary, secondary, preparatory, and tertiary). The course was designed to enable students to know their rights and duties in society and live in equality, mutual respect and trust with their fellow citizens.²⁰⁹ Efforts were made to make civic and ethical education different from political education during Dergue regime. From secondary school onwards, the course focuses on teaching the principles of the Ethiopian constitution and the human and democratic rights of Ethiopia's nations, nationalities, and peoples. In effect, the course was meant to create civic awareness regarding the country's political transformation from the brutal Dergue regime to the FDRE government with guarantees of democracy.

Teaching human rights more comprehensively, in addition to a brief introduction on human rights in civic and ethical education courses, is at least in theory meant to be accomplished through the work of the Ethiopian Human Rights Commission and the law schools. The former was, in fact, established with the objective of educating

207 See The Education and Training Policy and Its Implementation, Ethiopian Ministry of Education, Feb. 2002, 68.

208 See The Education and Training Policy and Its Implementation, Ethiopian Ministry of Education, Feb. 2002, 68.

209 The Education and Training Policy and Its Implementation, Ethiopian Ministry of Education, Feb. 2002, 33–34.

the public to raise their awareness of human rights, which it would undertake in addition to its two other purposes: ensuring that human rights are protected, respected and fully enforced and ensuring that necessary measures are taken where they are found to have been violated.²¹⁰

Ethiopian law schools have a nationally harmonized curriculum for their undergraduate programme in law, of which human rights law comprises one of the core courses.²¹¹ Nonetheless, the focus is predominantly on foundations and principles of international human rights law, with a discretionary reference to human rights abuses that occurred during Dergue regime. No specific course on Dergue-era crimes has been designed or included in the curriculum of the law school, although Ethiopian courts have adjudicated Dergue-era crimes in a process that took almost two decades, 1992–2010. Neither the human rights law course nor the criminal law course discusses the scope and nature of crimes committed by Dergue.

2.13 Coming to Terms with the Past through the Media

The very first article of the Transitional Charter that established the TGE in 1991 guaranteed that every individual shall have freedom of expression – a fundamental shift from the situation in Dergue era. Dergue violently suppressed opposition and independent opinions and publications, and newspapers and mass media were turned into official propaganda organs, often with the help of Soviet media trainers. The TGE liberalized the press like never before in Ethiopian history. It issued Press Proclamation No. 341/1992 on the ground that a free and independent press is a fundamental precondition of democracy. Within the five years following the establishment of the TGE, over 200 newspapers and 87 magazines became operational in Ethiopia.

Nonetheless, the promises of the transitional period have not been kept. The EPRDF kept state media under party control and did not transform them into public media. It also failed to allow the state-owned media to become independent. Although the country issued a Broadcasting Proclamation in 1999 to allow for the establishment and running of commercial stations, it was only in 2006 that the first two private radios were issued licenses on the grounds that the companies were seen as sympathetic or aligned to the ruling party. The EPRDF put community radio stations under close watch, let alone private ones. The Ethiopian Press Agency (EPA), an organization run by party affiliates, runs government newspapers.

Regarding the crimes committed during Dergue era, reports were often aired on Ethiopian radio and television. As part of the legitimacy building effort, the EPRDF regularly reported on Dergue atrocities in the state media during the first years of

²¹⁰ Proclamation No. 210/2000, Ethiopian Human Rights Commission Establishment Proclamation, Article 5.

²¹¹ See National Modularized Curriculum of the LL. B Program in Laws, April 2013.

transition. The stories of the armed struggle have often been broadcast by Ethiopian Television (ETv) to depict the heroism of the EPRDF forces. Regarding the trial process, significant media coverage was given only after the whole process was completed. In a two-part documentary entitled *Findings of Human Rights Abuses in the Red Terror Era*, ETv presented to the public several episodes of torture and a brief summary of the trial's outcome concerning top-ranking Dergue officials.

State-owned media were not allowed to air diverse opinions until 2005, where in connection to the election campaign the opposition parties were granted unprecedented access to air their views using state-owned media such as Ethiopian television and radio. The press freedom honeymoon, however, ended with the 2005 post-election conflict. The Ethiopian government accused various media organizations of incitement to commit genocide and treason.²¹² The situation resulted in the jailing of journalists and the shutting down of media outlets, following which the government's censorship and control became even tighter.

With access to independent media becoming limited, if not unavailable altogether, Ethiopians have started seeking and exchanging information through two alternative mechanisms: international broadcasters and social media. The international hosts with widespread acceptance in Ethiopia are the Voice of America (VOA) from Washington DC, the United States, and Deutsche Welle from Bonn, Germany. The two broadcasters have reached the larger Ethiopian public by broadcasting relatively independent information in Ethiopian languages. Al Jazeera has become the most popular international television channel among Ethiopian elites with the ability to understand English.

Social media has proved to be an indispensable means of communication for Ethiopians who would otherwise not have accessed relevant information. The recent series of protests held mainly in the Oromia region primarily resulted from social media use. As Jawar Mohammed, arguably the most prominent figure in the Oromo protests, noted in a 2018 interview with Al Jazeera, no change could have been possible in Ethiopia without social media.²¹³ Indeed, for the first time in Ethiopian history, protests and changes were mainly discussed and reported by the public via social media outlets such as Facebook, Twitter, and YouTube. Similar statements, albeit in a different context, were made by another opposition leader, Andergachew Tsige, who warned that he and his supporters would return to social media if the government of Abiy Ahmed would not respect the promises of the transition.

In addition to the absence of a free and independent press, the reliance on social media results from technological advancements related to smartphones and the internet. According to some reports, out of a hundred million people, the number of Ethiopians on Facebook in Afan Oromo, Amharic, English and other languages is

²¹² For details, see Metekia, T. S. *Prosecution of Core Crimes in Ethiopia: Domestic Practice vis-à-vis international standards* (Leiden: Brill, 2021) 161–169.

²¹³ The Listening Post, 'Social Media Shaping Calls for Ethiopia Political Change', *Aljazeera*, 12 Aug. 2018, accessed 4 June 2022, <https://www.youtube.com/watch?v=MkNuDr4Tbxk>.

more than twenty million, of which the majority access the internet from a mobile device. Recent instances show that social media has become the primary source of information in Ethiopia.

In Ethiopia, both before and after the 2018 transition, the government has aimed to control and regulate social media use. On several occasions and in different parts of the country, the internet has been shut down for as long as a month or more. In a major step taken recently, the Ethiopian parliament has issued a Hate Speech and Disinformation Proclamation,²¹⁴ which criminalizes the use of social media to incite violence and disseminate false information. The proclamation has been criticized by rights groups and the UN on the grounds that it broadly and vaguely defines social media platforms and activities, thereby threatening freedom of speech and opinion.

2.14 Coming to Terms with the Past through Art

One of the significant lexical changes that occurred in post-Dergue Ethiopian literature and everyday language relates to the use of the word ደርግ (dergue). Derived from the Geez language, ‘dergue’ referred in Amharic to committee or council. In 1974 ‘dergue’ became a shortened form of the lengthy official name የጦር ሐይሎች የፖሊስ ሰራዊትና የብሔራዊ ጦር ደርግ (armed forces, police and territorial army council). The name Dergue became the most common unofficial reference to the regime until its downfall, irrespective of whether said council had changed itself into a Provisional Military Government on 12 September 1974 and established the PDRE in 1987. Dergue has become a reference used in almost all Ethiopian languages to denote the socialist government that ruled the country from 1974 to 1991. With the regime’s downfall, the word ‘dergue’ has vanished from Ethiopian vocabulary in the sense that no written or verbal language uses the word to refer to its original meaning, council or committee. It has become a taboo and an expression used only if one needs to mock an undemocratic person/system or despise and condemn a despicable action that is dictatorial or violent.

After coming to power in 1991, the EPRDF used national television to depict the heinous nature of Dergue and the democratic promises of the new government. After Dergue trials were completed in 2010, a two-part documentary film entitled *Findings of human Rights Abuse During the Red Terror Era* was produced by the government and aired on national television. It covered briefly the trial process, the historical injustice and the efforts made by the current government to bring perpetrators to justice.

The most prominent and accessible form of reappraisal of the Ethiopian past has been carried out through works of film. Having witnessed its first film in 1917 and

²¹⁴ Hate Speech and Disinformation Prevention and Suppression Proclamation, Proclamation No. 185 /2020, entered into force 23 March 2020.

cinema house in 1927, Ethiopia is believed to be a pioneer in sub-Saharan Africa in introducing film. This development was put on hold from 1974 to 1991. The downfall of Dergue brought the revival of the film industry. Several movies (mainly in the comedy genre) were produced thereafter, although their reach was limited until recently to the major cities.

Ethiopian films that have attempted to portray the political situation during Dergue regime have revealed the ironic reality that Ethiopians harbour divergent interpretations of the violence and the struggle. In movies such as the 18-minute film *Red Terror*, ቀይሰኩተት (*Red Mistake*), አባትየው (*The Father*), የሎሚሽታ (*Scent of Lemon*), ቱዛ (*Morning Dew*) and a documentary entitled የወንዝ መፅበል (*Deluge*), one could conclude that Ethiopian movies on the Dergue regime try to communicate two different messages regarding the past and the present.

These movies have managed to present the nature and extent of Dergue's violence in both implicit and overt ways. The films show scenes of torture, death and forced conscription into the armed forces. They contain scenes set in prison cells and underground torture chambers.

Nonetheless, Ethiopian films appear to have rejected post-Dergue political developments. At a closer look, the movies do implicitly disapprove of the current federal-state structure and the recognition of diverse ethnic identities as a development that has eroded Ethiopian nationalism. As a result, the films deplore the brutal nature of Dergue but do not celebrate post-Dergue developments. Instead, they attempt to summon a nostalgia of nationalism in pre-Dergue Ethiopia, which they present to the viewer as what an Ethiopian unity should resemble.

This artistic characterization of post-Dergue Ethiopia could be explained by the fact that the 1991 Ethiopian transition has not been representative. It was an imposed transition that has not entertained diverse views through a national reconciliation scheme. As a result, Ethiopians disagree as to whether the post-Dergue federal structure is the best fit for the country. Therefore, one can infer from the artistic rejection of the current state structure which segment of Ethiopian society dominates the local film industry.

3 Stocktaking: Successes and Failures of Transitional Justice in Ethiopia

3.1 Successes in Coming to Terms with the Past

Measuring the successes of the transitional justice mechanism adopted in post-1991 Ethiopia is a tricky question. Nonetheless, the following points might be considered positive developments compared to the country's realities during the Dergue regime.

- **Justice:** Given that neither reconciliation nor reparations were put in place, whether victims were satisfied with how Ethiopia attempted to come to terms

with its violent past depends on the analysis of other mechanisms such as criminal prosecution. In that respect, the fact that Ethiopia put all Dergue officials and affiliates on trial could be considered a success story from the perspective of retributive justice, save the gaps discussed in section 2.2. below.

- **Elections and Multi-Party System:** It was only after the downfall of Dergue that elections involving the participation of several political parties became possible in Ethiopia. Since 1991, Ethiopia has established a multi-party system, although it has always been the EPRDF coalition that has remained in power through contested elections.
- **Human Rights Laws and Institutions:** Compared to the Dergue regime, Ethiopia now has made significant improvements in guaranteeing individual human rights. The incorporation of human rights provisions from the UDHR and the International Covenants on Human Rights into the DRE constitution, which also stipulated that international human rights treaties have precedence over domestic laws and the constitution itself, is a significant positive development. The fact that the country established national human rights institutions such as the Ethiopian Human Rights Commission to educate the public and promote respect for human rights could be considered a success story.
- **Laws on Impunity:** With the view to fighting impunity, the adoption of the FDRE Constitution in 1994 Ethiopia has put an end to prosecutorial discretion to prosecute gross human rights violations. As per Article 28, the government could reach no executive decision regarding amnesty for perpetrators of what the Ethiopian law refers to as crimes against humanity (such as genocide, summary executions, forcible disappearances or torture). Interestingly, the constitution has stipulated that even the legislator does not have the power to enact laws to set aside the stipulation of Article 28.
- **Federalism:** The federal state structure that Ethiopia adopted after the downfall of Dergue as a response to the centuries-old unitary state structure comes out as a significant success story in contemporary political debates in Ethiopia. The federalism, which took into account the multinational nature of the country's composition in terms of linguistic and ethnic identities, is central to answering concerns that led to the creation of various liberation fronts that engaged in the civil war against Dergue. Nonetheless, critics often accused federalism of widening ethnic polarization in the country.

3.2 Failures: 'Come, Come Mengistu'

Except for some of the points raised in 2.1. above, the transitional justice mechanisms adopted in Ethiopia did not bear good fruit. Even the above-mentioned success stories have been overshadowed by the EPRDF's deteriorating human rights record. A 2017 report by *The Economist* revealed that Dergue's Colonel Mengistu Hailemariam, who lives in exile in Zimbabwe, 'seems to be growing in popularity

back home, especially in towns and among those too young to remember the misery of his rule'.²¹⁵ In recent protests, the youth were heard chanting 'come, come Mengistu'.²¹⁶ The following points may explain this massive failure in Ethiopia's effort to confront its past.

- **Unrepresentative Transition:** The 1991 transition from Dergue to a new political order was driven by the interest of those who had the upper hand in the armed conflict, particularly the EPRDF coalition. The two conferences in London and Addis Ababa were not concerned with forming a widely representative transitional government. Instead, they focused on handing governmental power over to the TPLF led EPRDF. Victim groups such as the EPRP and MEISON were excluded from the conferences and the resultant transitional government because of their alleged political differences with the EPRDF.
- **Victors' Justice:** Like in the cases of the Red and the White Terrors, crimes perpetrated during the armed conflicts were admittedly not one-sided. Several reports alleged that the rebel forces had committed acts that could constitute violations of common Article 3 to the 1949 Geneva Conventions or the war crimes provisions of the Penal Code of 1957 of Ethiopia. Nonetheless, only officials, members, and affiliates of Dergue (the vanquished) were implicated in the SPO Proclamation. The SPO prosecuted only Dergue. No other investigative or prosecutorial mechanism was established to deal with crimes allegedly perpetrated by other groups, including those who ascended to power in 1991.
- **Delayed Justice:** The process of prosecuting Dergue through the SPO scheme took about two decades. The SPO was established in 1992 and presented its completion report to the House of Peoples' Representatives in 2010. Some of the trials, such as the main trial involving the highest-ranking Dergue officials, took more than 12 years to complete. The process was criticized by the African Commission on Human and Peoples' Rights (ACHPR) as involving a violation of the accused's right to be tried within a reasonable time.²¹⁷ Admittedly, in remarks made a decade after the decision to prosecute was reached, the late Prime Minister Melese Zenawi, who was also the President of the TGE at the time of the decision, stated, 'I think we sort of swallowed more than we could chew'.²¹⁸
- **Absentees' Justice:** Ethiopian trials are, as noted above, trials for absentee defendants. There is no other criminal trial in history that has prosecuted some 2,188 defendants in absentia. This is a result of the government's inability or unwillingness to secure the extradition of fugitives. The fact that several top-rank-

²¹⁵ *The Economist*, 'Why Ethiopians are nostalgic for a murderous Marxist regime,' 7 December 2017.

²¹⁶ *The Economist*, 'Why Ethiopians are nostalgic for a murderous Marxist regime,' 7 December 2017.

²¹⁷ See ACHPR, *Haregewoin Gabre-Selassie and IHRDA (on behalf of former Dergue officials) vs. Ethiopia* (Decision), 12 October 2013, Comm. No. 301/2005, para. 240.

²¹⁸ See Kjetil Tronvoll, 'The Quest for Justice or the Construction of Political Legitimacy: The Political Anatomy for the Red Terror Trials' in *The Ethiopian Red Terror Trials: Transitional Justice Challenged*, ed. Kjetil Tronvoll et al. (Martlesham: James Currey, 2009) 84–95, 92.

ing militaries and civilian officials of the Dergue regime are living in Zimbabwe and several developed countries, often in luxury, has sent the message that the prosecution process has failed to serve its intended goals.

- **Memory and Memoirs:** Ethiopia has not made a meaningful official effort to create memorial sites and commemorative events so that the victims and successive generations would remember the violence and develop a culture that prevents such atrocities from recurring. Although victims' associations made commendable efforts, the absence of a more representative and national effort to establish and maintain non-partisan memorial sites and commemorative events has kept the public in the dark about what happened during Dergue. The impact of such a failure is even more prominent given that Dergue officials have continuously produced memoirs that are unrepentant and aimed at justifying the violence that was perpetrated.²¹⁹
- **From aborted reconciliation to a national dialogue:** The decision of the TGE in 1992 to establish the SPO was reached by rejecting calls for national reconciliation or an approach that would combine prosecution with reconciliation. It is the case that the current Ethiopian political landscape is a manifestation of several missed opportunities to bring the country to discuss its disagreements in the process of national reconciliation. A positive development in this regard was the establishment of the above-mentioned reconciliation commission in 2019. However, the parliament dissolved the reconciliation commission in March 2022. The reconciliation commission could not undertake meaningful work due to its defective formulation in terms of temporal and subject matter jurisdiction in March 2022. This is yet another missed opportunity to reconcile victims and perpetrators and resolve historical injustice in Ethiopia. In January 2022, Ethiopia started experimenting with a new transitional justice institution referred to as National Dialogue Commission, established under Proclamation No. 1265/2021.²²⁰ The dialogue commission has replaced the reconciliation commission to ultimately bolster a national consensus and a culture of trust by mending degraded social values.²²¹ The replacement of the reconciliation commission by the dialogue commission appears to lack strong justification, as the former could have accomplished what is envisaged by the latter. The effec-

219 The memoirs include: F. Desta, *Abiyotuna Tizitaye [my Reminiscences of the Revolution]* (Los Angeles: Tsehai Publishers, 2015); Fikre-Selassie Wogderes, *Egnana Abiyotu [We and the Revolution]* (Los Angeles: Tsehai Publishers, 2014). For memoirs written by members of opposing political parties, such as the Ethiopian People's Revolutionary Party (EPRP), see Hiwot Teffera, *Tower in the Sky* (Addis Ababa: Addis Ababa University Press, 2012).

220 The Ethiopian National Dialogue Commission Establishment Proclamation, Proclamation No. 1265/2021, entered into force 13 January 2022.

221 The Ethiopian National Dialogue Commission Establishment Proclamation, Proclamation No. 1265/2021, Preamble Para 3.

tiveness of the dialogue commission in achieving the much-needed peaceful and consensual new beginning is yet to be seen.

- **Gross Human Rights Violations:** Although Ethiopia has made significant improvements in terms of adopting human rights law and establishing institutions, a further assessment of Ethiopian practice reveals the existence of substantial deviations from the promises of the law. Firstly, there have been several allegations that core crimes other than those already prosecuted have been perpetrated in various regions of Ethiopia.²²² The government has often dismissed the allegations as political propaganda of the opposition political parties or as enemy campaigns aimed at infiltrating and disintegrating the country. It was only in 2018 that, for the first time in Ethiopian history, an incumbent government publicly admitted that widespread and systematic acts of torture and terror had been perpetrated against the Ethiopian people by its own police and security forces.²²³ Yet, this admission and acknowledgement of state criminality did not put an end to the violence in Ethiopia. As also noted by the time of writing of this case study, violence in Ethiopia has continued unabated. In connection to political unrest in the Oromia region, attacks have been carried out against the civilian population on the grounds of religion, ethnicity or politics.
- **Another Devastating Civil War:** In what could be seen as a failure of the transitional justice mechanisms adopted since 1991, Ethiopia is now in a civil war. In the war that broke out on 4 November 2020, the TPLF, the architect of the transitional process in 1991, is fighting the National Defense Force in what the latter initially referred to as an operation to restore the rule of law. Although the specific causes and consequences of the war remain contested, it is evident that this civil war is a result of a three-decades-old repressive and unrepresentative governance. This civil war could indeed be traced back to the undemocratic beginnings of 1991.

222 Notable allegations include: 1) the Anuak Situation, which represents the continued commission of international crimes against the Anuak communities in Southwest Ethiopia, allegedly by Ethiopian National Defence Force (ENDF) since 2003; see Human Rights Watch, ‘Targeting the Anuak’, accessed 24 September 2019, <http://www.hrw.org/reports/2005/03/23/targeting-anuak>; 2) the Ogaden conflict, in which alleged commissions of war crimes and crimes against humanity by the ENDF have been reported; see Human Rights Watch, ‘Collective Punishment: War Crimes and Crimes against Humanity in the Ogaden area of Ethiopia’s Somali Region,’ 13 June 2008, accessed 24 September 2020, <http://www.hrw.org/node/62176>; 3) The eviction and deportation of members of the Amhara ethnic group from the Benishangul-Gumuz regional states have been widely portrayed as acts of ethnic-cleansing; accessed 24 September 2020, <http://www.ethiomeia.com/addis/5775.html>; 4) A widespread and systematic attack against the members of ethnic Oromos as reported by different organizations such as Amnesty International; see e. g. Amnesty International, ‘Because I am Oromo: Sweeping repression in the Oromia region of Ethiopia’ (Amnesty International Report, 27 October 2014), accessed 24 September 2020, <https://www.amnesty.org/en/documents/afr25/006/2014/en>.

223 See Prime Minister Abiy Ahmed Speech to the Parliament, 1 July 2018, accessed 22 September 2020 <https://www.youtube.com/watch?v=wJnC2aX4jP8&t=8079s>.

Overall, the transitional justice process adopted in Ethiopia following the downfall of Dergue was incomplete because it did not consider the need to establish important institutions that could have brought about the desired transformation in the country's socio-political landscape. The process lacked a genuine and impartial effort to disconnect the country from its repressive past and heal its wounds as a guarantee of non-repetition of violence. Instead, it was a disguised partisan endeavour that has allowed for the continuation of large-scale and clandestine violence. The ill-conceived transitional justice process has not only failed in design and implementation but has also brought the country back into armed conflict.

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